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THE  
T R I A L  
OF *Crossfield*  
ROBERT THOMAS CROSSFIELD, *K*

FOR  
High Treason,  
AT THE  
SESSIONS HOUSE IN THE OLD BAILEY,

ON  
*Wednesday the Eleventh, and Thursday the Twelfth of May,*  
1796.

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TAKEN IN SHORT-HAND,  
By JOSEPH GURNEY.

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L O N D O N :  
SOLD BY MARTHA GURNEY, BOOKSELLER, HOLBORN-HILL.

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1796.

[ *Entered at Stationers Hall.* ]



# TRIAL

ROBERT THOMAS CROSSFIELD,

High Treason,



In which the Elements, and Thursday for the Trial of May,

1796.

TAKEN IN SHORT HAND

JOSEPH GERMER.

—————

LONDON:

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1796.

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THE  
**TRIAL**

OF

**ROBERT THOMAS CROSSFIELD**

FOR

**HIGH TREASON.**

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**O**N the 31st of August, 1795, Robert Thomas Crossfield was apprehended at Fowey in Cornwall, sent up to London, and was committed by the Privy Council to the Tower.

On the 14th of January, 1796, the Grand Jury for the City of London, sitting at the Sessions House in the Old Bailey, returned a true Bill against Robert Thomas Crossfield, Paul Thomas Le Maitre, John Smith and George Higgins, for High Treason,

On the 15th of January Paul Thomas Le Maitre, John Smith, and George Higgins surrendered themselves in Court, and were committed to Newgate.

On the 20th of January, Mr. Gurney was assigned by the Court, of Counsel for Paul Thomas Le Maitre, John Smith and George Higgins,

On the 16th of February, Mr. White, Solicitor to the Treasury, delivered to each of the prisoners a copy of the Indictment, a list of the Jurors impannelled by the Sheriffs, and a list of the Witnesses to be produced by the Crown, for proving the said Indictment,

On the 17th of February, Mr. Adam was assigned by the Court, of Counsel for Paul Thomas Le Maitre, John Smith and George Higgins,

On the 20th of February, Mr. Adam and Mr. Gurney were assigned of Counsel for Robert Thomas Crossfield.

On the 5th of April, Robert Thomas Crossfield was removed by Habeas Corpus from the Tower to Newgate.

At the Session on the 6th of April the prisoners were arraigned on the following indictment, and severally pleaded Not Guilty.

# HIGH TREASON.



**{CAPTION.}** [London]—At the General Session of Oyer and Terminer of our Lord the King holden for the City of London at Justice Hall in the Old Bailey within the Parish of Saint Sepulchre in the Ward of Farringdon Without in London aforesaid on Wednesday the thirteenth day of January in the thirty-sixth year of the reign of our Sovereign Lord George the Third King of Great Britain &c. before William Curtis Esquire Mayor of the City of London Sir Archibald Macdonald Knight Chief Baron of our said Lord the King of His Court of Exchequer John Heath Esquire one of the Justices of our said Lord the King of his Court of Common Pleas Sir Alexander Thomson Knight one of the Barons of our said Lord the King of his said Court of Exchequer Richard Clarke Esquire William Pickett Esquire Paul Le Mesurier Esquire Stephen Langston Esquire Aldermen of the said City John Silvester Esquire and others their Fellow Justices of our said Lord the King assigned by Letters Patent of our said Lord the King made under the Great Seal of our said Lord the King of Great Britain To the same Justices above named and others or any two or more of them directed to inquire more fully the truth by the oath of good and lawful men of the City of London and by other ways means and methods by which they shall or may better know as well within Liberties as without by whom the truth of the matter may be better known of all treasons misprisions of treason insurrections rebellions counterfeittings clippings washings false coinings and other falsities of the money of Great Britain and other Kingdoms or Dominions whatsoever and of all murders felonies manslaughter killings burglaries rapes of women unlawful meetings conventicles unlawful uttering of words assemblies misprisions confederacies false allegations trespasses riots routs retentions escapes contempts falsities negligences concealments maintenances oppressions champartys deceipts and all other evil doings offences and injuries whatsoever and also the accessaries of them within the City aforesaid (as well within Liberties as without) by whomsoever and in what manner soever done committed or perpetrated and by whom or to whom when how and after what manner and

of all other articles and circumstances concerning the premises and every of them or any of them in any manner whatsoever and the said treasons and other the premises to hear and determine according to the laws and customs of England by the oath of Henry Rutt William Arthur Adam Dennis William Hunter Thomas Knott Joshua Knowles Alexander Lean Thomas Ayres John Tombs Charles Aldridge John Guy Thomas Fellows James Slatford John Back Charles Schofield Joseph Aldridge and William Kine good and lawful men of the said City now here sworn and charged to enquire for our said Lord the King for the body of the said City It is presented in manner and form following (that is to say)

{ INDICTMENT. } [London to wit]—The Jurors for our Lord the King upon their oath present that Robert Thomas Crossfield late of London Gentleman Paul Thomas Le Maitre late of the Parish of Saint Ann Soho in the County of Middlesex watch case maker John Smith late of Westminster in the County of Middlesex aforesaid bookseller and George Higgins late of London druggist being subjects of our said Lord the King not having the fear of God in their hearts nor weighing the duty of their allegiance but being moved and seduced by the instigation of the devil as false traitors against our said Lord the King their supreme true lawful and undoubted Lord and wholly withdrawing the cordial love and true and due obedience which every true and faithful subject of our said Lord the King should and of right ought to bear towards our said Lord the King on the first day of September in the thirty-fourth year of the reign of our Sovereign Lord George the Third by the Grace of God King of Great Britain France and Ireland Defender of the Faith &c. and on divers other days and times as well before as after at London aforesaid (to wit) in the parish of Saint Dunstan in the West in the Ward of Farringdon Without maliciously and traitorously with force and arms &c. did compass imagine and intend to bring and put our said Lord the King to death

And to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le

Maitre

Maitre John Smith and George Higgins as such false traitors as aforefaid on the faid first day of September in the thirty-fourth year aforefaid and on divers other days and times as well before as after at London aforefaid in the parish of Saint Dunstan aforefaid and Ward aforefaid did together with divers other false traitors whose names are to the faid Jurors unknown with force and arms maliciously and traitorously conspire combine consult consent and agree to procure make and provide and caused to be procured made and provided a certain instrument for the purpose of discharging an arrow and also a certain arrow to be charged and loaded with poison with intent to discharge and cause to be discharged the faid arrow so charged and loaded with poison from and out of and by means of the faid instrument at and against the person of our faid Lord the King and thereby and therewith to kill and put to death our faid Lord the King

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforefaid they the faid Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforefaid on the faid first day of September in the thirty-fourth year aforefaid at London aforefaid in the Parish of Saint Dunstan aforefaid in the Ward aforefaid with force and arms maliciously and traitorously did employ and engage and cause to be employed and engaged one John Hill to make and fashion divers (to wit) two pieces of wood to be used as models for the making and forming certain parts of the faid instrument from and out of and by means of which the faid arrow was so intended to be discharged at and against the person of our faid Lord the King as aforefaid for the traitorous purpose aforefaid and did then and there deliver and cause to be delivered to the faid John Hill a certain paper with certain drawings thereon drawn and designed as instructions and directions for making such models.

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforefaid they the faid Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforefaid on the faid first day of September in



the thirty-fourth year aforefaid and on divers other days and times as well before as after with force and arms at London aforefaid in the parifh of Saint Dunftan aforefaid and Ward aforefaid did meet confult and deliberate among themfelves and together with divers other falfe traitors whose names are to the faid Jurors unknown of and concerning their faid intended traitorous killing and putting to death of our faid Lord the King by the means and instrument aforefaid and how and where fuch killing and putting to death might be moft readily and effectually accomplished

And further to fulfil perfect and bring to effect their moft evil and wicked treason and treasonable compaffing and imagination aforefaid they the faid Robert Thomas Crofsfield Paul Thomas Le Maitre John Smith and George Higgins as fuch falfe traitors as aforefaid on the faid firft day of September in the thirty-fourth year aforefaid at London aforefaid in the parifh of Saint Dunftan aforefaid and Ward aforefaid with force and arms maliciously and traitoroufly did employ and engage and caufe to be employed and engaged one Thomas Upton to affift in making the faid instrument from and out of and by means of which the faid arrow was fo intended to be difcharged at and againft the perfon of our faid Lord the King as aforefaid for the traitorous purpofe aforefaid and did then and there for that purpofe deliver and caufe to be delivered to the faid Thomas Upton a certain paper with certain figures and drawings thereon drawn and defigned as inftructions and directions for making fuch instrument and alfo certain pieces to wit two pieces of wood as models for the making and forming certain parts of the faid instrument

And further to fulfil perfect and bring to effect their moft evil and wicked treason and treasonable compaffing and imagination aforefaid they the faid Robert Thomas Crofsfield Paul Thomas Le Maitre John Smith and George Higgins as fuch falfe traitors as aforefaid on the faid firft day of September in the thirty-fourth year aforefaid at London aforefaid in the parifh of Saint Dunftan aforefaid and Ward aforefaid with force and arms maliciously and traitoroufly did deliver and caufe to be delivered to the faid Thomas Upton a certain metal tube to be ufed by him the faid  
Thomas

Thomas Upton in the making and forming of the said instrument from and out of and by means of which the said arrow was so intended to be discharged at and against the person of our said Lord the King as aforesaid for the traitorous purpose aforesaid and as a part of such instrument

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid and on divers other days and times as well before as after at London aforesaid in the parish of Saint Dunstan aforesaid and Ward aforesaid did together with divers other false traitors whose names are to the said Jurors unknown with force and arms maliciously and traitorously conspire combine consult consent and agree to procure make and provide and cause to be procured made and provided a certain other instrument with intent thereby and therewith and by means thereof to kill and put to death our said Lord the King

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid at London aforesaid in the parish of Saint Dunstan aforesaid in the ward aforesaid with force and arms maliciously and traitorously did employ and engage and cause to be employed and engaged one John Hill to make and fashion divers to wit two pieces of wood to be used as models for the making and forming certain parts of the said last mentioned instrument for the traitorous purpose last aforesaid and did then and there deliver and cause to be delivered to the said John Hill a certain other paper with certain drawings thereon drawn and designed as instructions and directions for making such models

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul

Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid and on divers other days and times as well before as after with force and arms at London aforesaid in the parish of Saint Dunstan aforesaid and ward aforesaid did meet consult and deliberate among themselves and together with divers other false traitors whose names are to the said jurors unknown of and concerning their said intended traitorous killing and putting to death of our said Lord the King by the means and instrument last aforesaid and how and where such killing and putting to death might be most readily and effectually accomplished

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid at London aforesaid in the parish of Saint Dunstan aforesaid and ward aforesaid with force and arms maliciously and traitorously did employ and engage and cause to be employed and engaged one Thomas Upton to assist in making the said last mentioned instrument for the traitorous purpose last aforesaid and did then and there for that purpose deliver and cause to be delivered to the said Thomas Upton a certain other paper with certain figures and drawings thereon drawn and designed as instructions and directions for making such last mentioned instrument and also certain pieces to wit two pieces of wood as models for the making and forming certain parts of the said last mentioned instrument

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid at London aforesaid in the parish of Saint Dunstan aforesaid and ward aforesaid with force and arms maliciously and traitorously did deliver and cause to be delivered



delivered to the said Thomas Upton a certain metal tube to be used by him the said Thomas Upton in the making and forming of the said last mentioned instrument for the traitorous purpose last ~~aforsaid~~ and as a part of such last mentioned instrument against the duty of the allegiance of them the said Robert Thomas Crofsfield Paul Thomas Le Maitre John Smith and George Higgins against the peace of our said Lord the King his crown and dignity and against the form of the statute in that case made and provided.

It appearing to the Court that the proper officer had not summoned the Jury in time for the prisoners to take their trial at the present Session, the trial was postponed to the next Session.

SESSION

SESSION HOUSE IN THE OLD BAILEY.

*Wednesday, May the 11th, 1796.*

PRESENT,

Lord Chief Justice EYRE;

Mr. Justice GROSE;

Mr. RECORDER;

And others his Majesty's Justices, &c.

*Counsel for the Crown.*

Mr. ATTORNEY GENERAL,

Mr. SOLICITOR GENERAL,

Mr. LAW,

Mr. GARROW,

Mr. WOOD,

Mr. FIELDING,

Mr. ABBOT.

*Counsel assigned for the Prisoner.*

Mr. ADAM,

Mr. GURNEY,

*Assistant Counsel.*

Mr. MOORE,

Mr. MACINTOSH.

*Solicitor.*

JOSEPH WHITE, Esq; Solicitor for the affairs of his Majesty's Treasury.

*Solicitors.*

Messrs. FOULKES and COOKE, Hart Street, Bloomsbury Square.

Mr. Attorney General said, that, as he understood the prisoners meant to separate their challenges, he proposed to proceed in the trial of Crossfield first.

*Robert*

*Robert Thomas Crossfield set to the bar.*

[*Mr. Shelton, the Clerk of the Arraignment, called over the Pannel.*]

Hilton Wray, Esq. challenged by the prisoner.

John Anderson, Merchant, not a freeholder in the city of London to the value of £.10 a year.

John Vincent Gandolfi, Merchant, challenged by the prisoner.

Thomas Dunnage, Merchant, excused on account of age.

Peter Pope, Esq. excused on account of age.

Abraham Favene, Merchant, excused on account of illness.

John Naylor, Merchant, challenged by the prisoner.

Joseph Norville, Merchant, not a freeholder.

David Jones, Merchant, challenged by the crown.

Thomas Latham, Merchant, not properly described in the pannel.

John Mair, Merchant, not a freeholder.

Sir Walter Rawlinson, Banker, excused on account of illness.

John Henry Schneider, Merchant, challenged by the prisoner.

Claude Scott, Corn-factor, challenged by the prisoner.

Rowland Stephenson, Banker, excused on account of deafness.

James Atkinson, Merchant, challenged by the prisoner.

Richard Heatley, Merchant, not a freeholder.

Duncan Hunter, Merchant, challenged by the crown.

William Axe, Stock-broker, not properly described in the pannel.

William Armand, Merchant, not properly described in the pannel.

John Greenfide, Corn-factor, sworn.

William Ward, Coal-factor, challenged by the crown.

John Prestwidge, Hop Merchant, not a freeholder.

Thomas Fothergill, Corn-factor, challenged by the prisoner.

Henry Foudrinier, Stationer, challenged by the prisoner.

Francis Barstow Nixon, Merchant, sworn.

Nathaniel Brassey, Banker, excused on account of illness.

William



William Morley, sen. Corn-factor, not a householder in the city of London.

Lewis Teffier, Merchant, challenged by the prisoner.

John Read, Coal-factor, not a householder.

Robert Reeve, Corn-factor, challenged by the crown.

Paul Agutter, Esq. excused on account of age.

James Brander, Merchant, not a freeholder.

Samuel Brandram, Merchant, challenged by the prisoner.

Charles Hamerton, Esq. not properly described in the pannel.

William Hallier, Merchant, challenged by the prisoner.

John Willis, Gentleman, excused on account of illness.

William Walker, Sugar Baker, sworn.

David Pugh, Grocer, not a freeholder.

Edward Simeon, Merchant, challenged by the prisoner.

Henry Stokes, Merchant, not a householder.

Percival North, Grocer, challenged by the crown.

Richard Lawrence, Sugar Baker, not a freeholder.

Henry Mitton, Banker, not a householder.

Henry Turner, Merchant, challenged by the prisoner.

Edward Brockfopp, Corn-factor, challenged by the prisoner.

Alexander Black, Merchant, sworn.

William Robinson, Merchant, challenged by the prisoner.

William Shone, Wine Merchant, sworn.

Daniel Shirley, Wine Merchant, not a freeholder.

John Garratt, Teabroker, challenged by the prisoner.

Thomas Higgins, Grocer, not a freeholder.

John Hammet, Banker, challenged by the prisoner.

William M'Andrew, Orange Merchant, not properly described in the pannel.

James Bell, Sugar Baker, not a freeholder.

Miles Stringer, Spice Merchant, excused on account of illness.

John Sherer, Merchant, challenged by the prisoner.

Joseph Stonard, Corn-factor, challenged by the crown.

Samuel Ibbetson, Mercer, challenged by the prisoner.

Henry Isherwood, Paper-maker, not a freeholder.

Windham Knatchbull, not a householder.

William

William Ascough, Undertaker, challenged by the crown.

John Addison, Linen Draper, challenged by the prisoner.

Thomas Wright, Soap-boiler, not properly described in the list delivered to the prisoner.

Arthur Windus, Coachmaker, sworn.

Richard Clarke, Coach-master, not properly described in the pannel.

William Purdy, Broker, challenged by the prisoner.

Edward Penny, Glover, not a householder.

Michael Eaton, Hosier, challenged by the crown.

Timothy Fisher, Linen Draper, not a householder.

Edward Newberry, Bricklayer, challenged by the prisoner.

William Norris, Mason, sworn.

Thomas Loveland, Baker, challenged by the prisoner.

William Lynes, Warehouseman, excused on account of illness.

William Gosling, Carpenter, sworn.

Benjamin Hanson, Orange Merchant, not a freeholder.

James Tyers, Sugarbroker, not a freeholder.

Henry Goldfinch, Hatter, challenged by the prisoner.

Henry Thomas Avery, Currier, excused on account of illness.

Nicholas Browning, Baker, challenged by the prisoner.

John Blades, Glassman, not a freeholder.

John Rowbuck, Broker, not properly described in the pannel.

Edward Jackson, Mans Mercer, not a freeholder.

Joseph Warner, Grocer, challenged by the prisoner.

Thomas Whipham, Silversmith, excused on account of illness.

John Crutchfield, Oilman, challenged by the prisoner.

William Crutchfield, Oilman, challenged by the prisoner.

Daniel Pinder, Mason, sworn.

Henry Nettlehip, Gent. not a Freeholder.

James Lyon, Lighterman, challenged by the prisoner.

William Leach, Vintner, not properly described in the pannel.

John Turner, Linen Draper, challenged by the prisoner.

William Humphreys, Senior, Grocer, challenged by the prisoner.

Anthony

Anthony Brown, Fishbroker, excused on account of age.  
 Walter Brind, Silversmith, excused on account of age.  
 Christopher Smith, Wine Merchant, challenged by the crown.  
 Richard Fisher, Haberdasher, not a freeholder.  
 Thomas Ovey, Hatter, challenged by the crown.  
 John Mackenzie, Oilman, challenged by the prisoner.  
 Thomas Jeffries, Linen Draper, one of the people called  
 Quakers.  
 William Parker, Glassman, excused on account of illness.  
 Thomas Abbott Green, Silversmith, not a freeholder.  
 Walter West, Ironmonger, challenged by the prisoner.  
 Benjamin White, Bookseller, sworn.  
 Stephen Adams, Silversmith, excused on account of illness.  
 Andrew Abbott, Potter, not a freeholder.  
 John Reid, Distiller, sworn.  
 Phillip Rundle, Goldsmith, challenged by the crown.  
 William Collier, Gent. challenged by the prisoner.  
 John Coe, Taylor, sworn.

### THE JURY.

John Greenfide,  
 Francis Barstow Nixon,  
 William Walker,  
 Alexander Black,  
 William Shone,  
 Arthur Windus,

William Norris,  
 William Gosling,  
 Daniel Pinder,  
 Benjamin White,  
 John Reid,  
 John Coe.

*The Clerk of the Arraignment charged the Jury with the Prisoner in the usual form.*



*The Indictment was opened by Mr. ABBOT.*

MR. ATTORNEY GENERAL.

May it please your Lordship,

Gentlemen of the Jury,

In the discharge of the very painful duty, which belongs to the situation which I hold, I am called upon this day to address you with reference to a case of a most serious nature, whether it is considered with regard to the public, or the prisoner, who stands at the bar.—Gentlemen, the indictment, which you have heard read, charges the prisoner with the highest offence known to the law of our Country, and it charges the prisoner with the most aggravated species of that highest offence.—It charges him with compassing and imagining the death of the King, and with having, for the purpose of carrying that imagination into execution, prepared the means of destroying the person of the Sovereign.

Gentlemen, I shall have very little occasion, in the course of what I have to offer to your attention, to say much to you upon the law of this particular case; I shall state it to you in the words of a great judge, a man attached unquestionably to the genuine principles of this Constitution, whose name has long been revered, and will continue to be revered whilst the Constitution of the Country itself shall endure. I mean the late Mr. Justice Foster—He states the statute of the 25th Edward III. upon which this indictment is framed, and which you probably will hear read and commented upon by great modern living authorities: he states the statute in these words—"When  
" a man doth compass or imagine the death of our Lord the  
" King, and thereof be upon sufficient proof attainted of open  
" deed by people of his own condition."—He states that in the case of the King, this statute of 25th Edward III. has with great propriety retained the rule that the will is to be taken for

the deed. With respect to homicide in the case of individuals, the law of this Country once was, that even as to them the will should be taken for the deed: that law hath been altered in the case of private individuals; but it remains unchanged with respect to the Sovereign of the Country, and the reason why the law hath been continued, as it anciently was, with respect to the King, is stated in the book which I have been reading to you, as follows: "The principle upon which this is founded is too obvious to need much enlargement: the King is considered as the head of the body politic, and the members of that body are considered as united and kept together by a political union with him, and with each other: his life cannot in the ordinary course of things be taken away by treasonable practices without involving a nation in blood and confusion: consequently every stroke levelled at his person is, in the ordinary course of things, levelled at the public tranquillity. The law, therefore, tendered the safety of the King with an anxious concern, and, if I may use the expression, with a concern bordering upon jealousy. It considereth the wicked imaginations of the heart to be of the same degree of guilt as if carried into actual execution from the moment." (And I would beg your attention, Gentlemen, to this passage :) "From the moment *that measures appear to have been taken to render them effectual.*"

Gentlemen, God alone can read the heart of man: and the legislature has, therefore, insisted upon this, in every trial between the King and a prisoner indicted, that he shall be attainted of *open deed* by people of *his condition*: that is to say, that some measures shall be taken to effectuate that evil imagination of the heart, some fact shall be done, or attempted to be done, in order to prove to man's judgment that that conception, and that imagination did enter into the man's heart.—This measure, proof of which is made necessary by the law, is ordinarily known by the name of an overt act, and every indictment for Treason, as you will hear, must charge that the party compassed and imagined the death of the King, and then it must state, upon the face of it, those circumstances and facts, which are the measures,  
by

by which the prosecutor insists that the party has disclosed that traitorous compassing and imagination of his heart.

Gentlemen, the present indictment specifies several such overt acts. With respect to many of them, conspiracy with others is of the essence of them—With respect to many others of them they are so framed that, if this prisoner is alone guilty, the circumstance that he is the sole person to whom, upon that supposition, guilt could be imputed will be no objection to his being found guilty, if the justice of the case, upon a due attention to the circumstances of the case before a Jury of his country, as affecting him alone, requires that he shall be convicted.—I say that circumstance—that he is, in this way of putting the case, the only person guilty, will form no objection to his conviction.

Gentlemen, I state no more upon the law of the case but to add a single word to what I have already mentioned, and that is this observation—That if a Jury, and to this I would humbly beg the attention of the Court, as well as your attention—that if a Jury shall be satisfied that the measures, which were taken by the person indicted, were measures in his intention calculated to the end of destroying the King, in his idea effectual for the purpose intended, it cannot be a question which ought to entangle your consciences at all, whether those measures could have effectually executed the purpose with reference to which they were taken.

Gentlemen, I have stated to you that the offence with which the prisoner is charged, is the highest known to the law of England.—I have stated to you that it makes the party, in the case of the King, answerable for the intention demonstrated by an overt act to the same extent as that, in which he would be responsible for the actual execution of that act in the case of a private person.—When I have stated that, I am also to add, that the Constitution of the Country has provided more security for the person accused in the case of Treason, than it has provided for any party, who is the object of accusation in any other case known to the law of England. It has provided in ancient times many of these securities: it has provided many



of these securities in times to which the legislature which ordained them did not think proper practically to apply those provisions, which they were enacting for the defence of their posterity, or such of their posterity, as should be accused of such offences. In the case of murder, one of the highest offences known to the law of England, the party may be convicted upon the evidence of a single witness: he meets in the Court, where he is tried, the Jury, whose names are at that moment first known to him; he sees in that court for the first time the witnesses, upon whose testimony the deliverance is to be made between him and the Country; to that moment he may be, and he generally is, ignorant even of the names of those witnesses; and one witness credited will convict him. Our ancestors have provided otherwise in the case of Treason; they have required, and it is my duty so to state it to you, that the proof should not only be such, as should satisfy the minds of a Jury of the guilt of the prisoner, but that it must be formal proof too, such as the law requires; that is, if an individual to whom every one of you should be disposed to give the utmost credit, upon whose veracity you would pledge your own lives, if an individual witness shall speak to a single fact, though you may believe that witness, you cannot convict the prisoner; there must be in Treason two witnesses to convict the prisoner; at least one witness to prove one overt act laid in the indictment, and another witness to prove another overt act of the same Treason laid; that is, there need not be two witnesses to each overt act, but one witness to one overt act, and another to another overt act are required, and are allowed by the law to be sufficient witnesses to convict in a case of Treason.

Gentlemen, the individual accused meets the accusation in the face of his Country, also under circumstances, which form a great protection to him, which I will state to you presently in the words of the same great Judge, whose authority I have before cited to you, which do in some degree endanger public justice; and I will state to you distinctly, why I beg your attention to his words upon this part of the case. Gentlemen, the law

law has required, that in the case of Treason, the prisoner should have his indictment for a given number of days before he is called upon to plead to it.—It likewise requires that at the same time, that a copy of the indictment is given to him, a list of his Jurors shall be given to him, and that a list of the witnesses, who are to be produced in order to establish the charge, shall be put into his hand. The prosecutor, therefore, meets a person accused of this offence in this situation—a situation new in the law of England till a very late period. I think the trial of Lord George Gordon was the first, which, in the history of this Country, admitted the application of the statute of Queen Anne, with reference to the point, upon which I am now addressing you, for the legislature, that passed this act, did not venture to apply the provisions, which I have last stated to the Country, situated as the Country then was, but postponed the application of them till a period, which did not arrive, I think, till about twenty years ago.

Mr. Justice Foster, writing upon this statute before these provisions took place, states himself thus—“ The furnishing  
“ the prisoner with the names, professions, and places of abode  
“ of the Witnesses and Jury, so long before the trial, may  
“ serve many bad purposes, which are too obvious to be men-  
“ tioned: one good purpose, and but one it may serve: it giveth  
“ the prisoner an opportunity of informing himself of the cha-  
“ racter of the Witnesses and Jury: but this single advantage  
“ will weigh very little in the scale of justice or sound policy,  
“ against the many bad ends which may be answered by it. If  
“ it weigheth any thing in the scale of justice, the Crown is  
“ entitled to the same opportunity of sifting the character of the  
“ prisoners witnesses.”

Gentlemen, with respect to this matter of the witnesses, we meet to day to try a cause where the prisoner has been in possession of the names of all that can be produced, in order to support the indictment; while, at this moment, the names of those, who are to support the defence, although given in to an officer of the Court, are very properly, with a view to do justice to the intention of the legislature, withheld from those

who are to prosecute. Gentlemen, I mention this circumstance for the purpose only of desiring your attention to an observation which I am now about to state to you, in a case of the extraordinary nature, the circumstances of which I have to detail to you. It may possibly occur that I may be obliged to call witnesses in this case, who may be unwilling enough even to state the truth to you upon this subject. You will give, I am persuaded you will, that attention, which the policy and spirit of such provisions, as those which I have mentioned, must require from a Jury.—I mean a jealous and anxious attention to the testimony, and the nature of the testimony, which every witness, on every side, in this important business, shall lay before your consciences, remembering that the Country and an individual meet together, under these disadvantages which I have been stating.

Gentlemen, some of the overt acts, stated in this indictment, charge the prisoner with conspiring with the other parties named in it, Paul Thomas Le Maitre, John Smith, and George Higgins, to procure and provide a certain instrument for the purpose of discharging an arrow, and likewise an arrow to be charged and loaded with poison, with intent to discharge, and cause to be discharged the same arrow, by means of the instrument, against the King's person, and thereby to kill him. The next overt act is, that the prisoner employed a person, of the name of Hill, to make two pieces of wood to be used as models, for the making and forming certain parts of the said instrument, for the traitorous purpose last aforesaid, and did deliver to him a certain paper with certain drawings thereon, drawn and designed as instructions and directions for making such models. There are likewise charged consultations among the parties, and the employment of a man of the name of Upton, to whom this paper was delivered, for the purpose of forwarding the project, and the delivering to him of a metal tube, which was to be part of the instrument. And then the indictment charges again the same overt acts, leaving out the fact of the consultation about, and the construction of the arrow charged with poison, with intent to kill the King by means of the arrow ;  
but



but charging the fact of the fabrication of the instrument or air gun, for the purpose of discharging it, as it might be discharged against the person of the King, without making the poisoned arrow part of the contents to be discharged.

Gentlemen, before I state to you what I shall be able to do without employing a great deal of your time and attention in this case, I mean the circumstances of it, you will give me leave to state, very shortly, what has passed relative to this matter, before I had the honour of addressing you impanelled in that seat.—There was a person of the name of Upton, whose name occurs upon this indictment, and whose name you will hear very frequently in the course of this trial, who was a mechanic, that lived in Bell-yard, near Temple Bar, who gave an information to the highest magistrates of this Country, I mean his Majesty's Privy Council, a considerable time ago, in which he distinctly charged himself, the prisoner at the bar, and other persons, whose names occur upon this record with the offence, the charge relative to which you are this day to determine upon.

Gentlemen, I before stated to you that the law of England requires two witnesses in the case of High Treason; they must be two credible persons, and one should have to lament, certainly, if one of them was an accomplice in the fact. It became necessary to scrutinize, with reference to this provision of the law, this mysterious matter, as in some parts of it perhaps it may appear to you to be, very diligently, and very accurately. The prisoner at the bar, charged with this offence, thought proper, as I shall prove to you as I am instructed, to fly from the accusation, and not to meet the justice of his Country. The other persons, whose names occur in this indictment, were apprehended. That species of diligent examination was given to the subject, which it was the duty of these great magistrates to give, in a case which aimed directly at the life of the Sovereign. In the course of this business those persons, so apprehended, were discharged upon bail—after the discharge of those persons upon bail, Mr. Crossfield, the prisoner, came from France to this Country, under circumstances which it will be my duty to state to you, and accompanied with a body of

evidence upon this subject to which it will be necessary, when I do state them, that you should give particular attention; and which made it incumbent upon those who have matters of this sort to direct, to propose to a Grand Jury of the Country the whole of the case, with a view that they should determine, in the first instance, whether this charge ought to be submitted to that Jury of the Country which is to-day to decide upon it.

Gentlemen, this business, if looked at with reference to all the circumstances which affect all the parties in it, is extremely complicated: it was carried in the form of an indictment before a Grand Jury of the Country. Upon principle—whether that principle was founded in the law of the Country or not, it is not material for me at this moment to consider—but from principle, they refused to permit the evidence in this business to be laid before them in the order which had a natural tendency to make that evidence intelligible; they took the whole matter into their own hands, and, examining all the parties upon the subject, and particularly examining that person of the name of Upton, whom I have before described to you as an accomplice, they found the bill against all the prisoners.

Gentlemen, unwilling, as any person would have been, undoubtedly, to have tried this cause upon the credit of Upton alone, or of Upton confirmed by any other individual, or confirmed even by strong circumstances, it would unquestionably have been my duty, if it had been in my power to have called that person here to-day, to have given his evidence to you, but withal to have stated, as far as it became me, and under the correction of the wisdom which presides here, that his evidence ought to have been received with great jealousy and with great attention; that you ought to protect, against such a witness, a prisoner, put upon his deliverance before you, till your unwillingness to receive his testimony had been subdued by a conscientious conviction, arising out of all the circumstances of the case, not only that he was as guilty as he admitted himself to be, but that other persons represented by him to be equally guilty with himself actually were so.

Gentlemen, it has however happened, whether fortunately for  
justice

justice or not I will not take upon myself to determine, because in my situation and as a man I do feel that, if on the part of the public I have to regret that this man's testimony cannot be offered to you, on the other hand, that I ought to remember, that if this man's testimony could have been refuted by any circumstances established on the part of the prisoner, or if by any examination addressed to him by the prisoner, or by others, the innocence of the prisoner could be established, it would be undoubtedly a public duty to produce such a person;—he ought to be produced, with a view that guilt might be detected if it does exist, and, on the other, that innocence may be established if it has been improperly accused. Since the bill however was found, it has happened that by the act of God that man has ceased to exist: he is dead: and I shall have occasion probably, in the course of what I have to offer to your attention, to prove that circumstance. It is very remarkable that—as I should unquestionably have asked you, if I had had that person to have produced as a witness at the bar this day, not to convict the prisoner upon his evidence, unless you had been satisfied by his evidence as confirmed by other testimony in the cause of the prisoner's guilt—I say it happens very remarkably, that I have a case to lay before you, in which I may say in the outset, as I should have been disposed, if he had been here, to have said in the conclusion, that you may lay his testimony out of the case from the beginning to the end of it.

Gentlemen, I shall proceed now to state to you the circumstances of this case, as they affect the prisoner at the bar, Mr. Crossfield. It was in the month of August, I think, 1794, that the charge was first brought forward by Upton; and being very unwilling (though it is both a delicate and a difficult task to avoid it) to make any such direct representation to you as he made to others upon the subject, I had better, perhaps, proceed to state to you the effect of that representation, by mentioning to you the facts which I am instructed to say the witnesses whom I shall call will prove against the prisoner, than detail to you what Upton personally represented with respect to any one of these facts.

Gentlemen,



Gentlemen, there are two questions of fact, which will deserve your particular attention. The first is, whether the prisoner at the bar really was engaged in a concern to fabricate such an instrument as is mentioned upon this record; and the next question for you to try will be, whether, if that be demonstrable and clear, it is or is not equally clear that that instrument, which he was so engaged in fabricating, was fabricated with the intent and for the purpose charged in this indictment—that is, to compass what he had imagined, the death of the King. With respect to the former of these facts, you will find by a witness whom I shall call to you, of the name of Dowding, that in September, 1794, upon the 8th of that month (and I should here advise you, that some of those witnesses whose testimony I am about to state do not know the individuals, or some of the individuals, who applied to them, but it will be distinctly proved to you by other persons that will be called who those individuals were), a person of the name of Dowding, who is a journeyman to a Mr. Penton, that lives in New Street Square, and who is a brass founder, will inform you that, upon the 8th of that month, in the afternoon, three men—whom I now state to you were Upton, who is dead; the prisoner, Mr. Crossfield; and a person of the name of Palmer, who will be called—came to his master's shop; that they asked him for a tube three feet long, and of five-eighths of an inch diameter in the bore: you will find he states the dimensions to be the same as other brass founders to whom they apply—five-eighths of an inch in the bore, and it was to be smooth and correct in the cylinder in the inside. The witness will inform you, if I am rightly instructed, that he shewed them a piece of a tube, and asked if that would do with respect to the size of it; that they informed him it would do, but that it must be thicker, in order that it might be smaller in the bore; the expence of it they seemed anxious about in their enquiries: the expence he stated to them in general would be high, but what would be the particular expence of it he could not take upon himself to state: he enquired what they wanted this tube for; and you will find, if I am rightly instructed with respect to his evidence, that the

answer

answer given to that was, that the purpose for which they wanted it was a secret, and that they could not disclose it to him.

Gentlemen, they applied upon the same day to another person of the name of Bland (the former not being able to supply them with the article that they wanted), who is a brass founder at number 40, Shoe Lane, Fleet Street: there were but two of them that came originally to him, and you will be satisfied that they were Upton and the prisoner. They asked for a tube, for a pattern to make another by: after they had asked for this tube, Palmer came in. This witness not being able to supply them, you will find they made another application upon the same day to a person of the name of James Hubbard, who lives in Cock Lane, Snow Hill, and is likewise a brass founder; he lives in the shop of a person of the name of Michael Barnett, to whom he was apprentice: and upon their addressing a question to him similar to that which they had addressed to the witnesses whose names I have before mentioned, he referred them to a person of the name of Flint, who is a man in the same shop, and who will likewise be called to you; and he will inform you that they asked him also for a tube; the barrel, I believe, was to be five-eighths of an inch in the bore, and about the eighth of an inch in thickness; that they proposed to finish it themselves, if the witness would cast and bore it: the witness told them that he must have a pattern; and then some conversation passed with respect to this pattern. They were very anxious to know, as you will find from his testimony, how long it would be before this barrel could be made: he gave them an answer upon that subject: and you will hear under what circumstances they parted with him. After these applications had been made to these several brass founders, Upton, and Crossfield, the prisoner at the bar, applied to a man of the name of Hill, who will likewise be called to you, Palmer being also in their company; and the evidence that Hill will give you is this—that Crossfield produced to him a paper, which I have now in my hand, which contains the model of part of an air gun, that is to say, it contains a drawing; by which drawing Hill, whose business was that of a turner in wood, was to fabricate the wooden part of the instrument. Hill, you will also find, asked them what they

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wanted this instrument for: they did not inform him that it was a secret: but they told him that it was for an electrical machine.

Gentlemen, this paper will deserve your very particular attention; because I have reason to believe that you will find not only that this paper was delivered by Mr. Crofsfield to Hill, but that that part of the writing upon the paper, which states the dimensions of the instrument, is in the hand-writing of Mr. Crofsfield. Hill, in consequence of this, following the drawing, turned some of the wooden parts of the model, a part of which I have now in my hand; and which it will be proved to you he carried, according to his orders, to Upton, in whose possession it will be proved that this part of the wooden model was found, as well as the tube, which I have now in my hand. It will be material for you to give your particular attention to these circumstances by-and-by.

Gentlemen, besides all this, it will likewise be proved to you, that there was in the possession of Upton another drawing, containing models of the instrument which we have charged in the first part of the indictment was to eject an arrow for the purpose of destroying the King; and when I have to state to you by-and-by the conversations of the prisoner Crofsfield which will be proved with respect to the tube and the arrow, and the nature of the instrument, you will see the materiality of the circumstances to which I am at present calling your attention. The other paper I have in my hand; and it contains different parts of this intended instrument. There is one part of it, to which you may think your particular attention is due; because, if I prove the circumstances that I have already stated, it will be incumbent upon the prisoner, I apprehend, more particularly after the evidence which I have to offer to you with respect to the intent, to give you some evidence for what purpose such an instrument as this was actually constructed. Here is a drawing of the arrow, which is of the form that you may see perhaps by my holding the paper up to you in this manner. It is like a harpoon, and it has this peculiar circumstance about it, that it is so formed, that when it presses against any hard substance the



two forks of it comprefs together, enter into the fubftance, and there is a hole at the end of it, which would then emit fome fubftance, which it is calculated to hold.

Gentlemen of the Jury, it will alfo be proved by another witnefs whom I fhall have to call, of the name of Cuthbert, that Upton and the prifoner went to him fome time in that fame month of Auguft, 1794, for the purpofe of looking at an air-gun that Cuthbert had. Cuthbert appears to have been an acquaintance of Upton's. You will hear from the witnefs himfelf what was the conduct of the prifoner at the bar with refpect to that air-gun in the poffeffion of Cuthbert: he examined it; he handled it; ftated that it would do very well for the purpofe; and after a converfation of this fort they left Cuthbert.

Gentlemen, it may probably be proved, if it be neceffary with refpect to the cafe of this prifoner, that fome of thefe inftruments which I have been ftating were in the hands of the other parties whofe names are upon this record; it is alfo poffible that papers, material to eftablifh the facts alledged againft fome of thefe parties, may be thought, according to the courfe which this caufe may take, neceffary to be produced in evidence upon this trial; but, without detaining you with refpect to the particulars of the evidence which applies to other perfons, I think, if I prove the facts that have been already ftated as againft Mr. Crofsfield, and if you fhall find that there is diftinct evidence of the intention with which he was engaged, in drawing thefe models, and providing for the fabrication of thefe inftruments, that there can be very little doubt indeed in refpect of his cafe.

Gentlemen, when the other parties were apprehended, I have before told you that Mr. Crofsfield abfconded. I believe I fhall be able to prove to your fatisfaction by a witnefs whom I fhall have to call to you of the name of Palmer, whofe name I have before mentioned, fome of the circumftances I am now about to open to your attention, as well as a great many of the circumftances which I have already ftated.

Mr. Crofsfield ufually lived in London. The firft place in which he hid himfelf, after this charge was made, was at Bristol:

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he returned afterwards from Bristol to London: and from London he went to Portsmouth, where he engaged himself on board a ship called the Pomona, which was employed in the South Sea Whale Fishery. I probably need not mention to you Gentlemen that the voyage of a ship, engaged in that commerce, is of a considerable duration—fixteen or eighteen months I believe—being a surgeon, he hired himself at Portsmouth on board that vessel. He went usually by the name of Doctor: it will be proved to you by witnesses, who come forward in this business, under circumstances, that entitle them to great credit, at least so I submit to your consideration, that this vessel sailed from Portsmouth to Falmouth: that during the voyage from Portsmouth to Falmouth you will find, if I am rightly instructed with respect to the representations that the mariners on board this vessel have made, Crossfield conducted himself with the greatest decency and propriety; his name however was unknown. They sailed from Falmouth, and, after they got out to sea in the progress of their voyage Mr. Crossfield informed the witnesses who will be called to you who he was. You will hear the account, that he gave of himself, the account that he gave of the part, that he had in this transaction, the circumstance of his relating his escape and his declarations that, if it was known that he was leaving this Country in that vessel, the Government would probably send a frigate after him, that he states in the most distinct manner, even before the capture of the Pomona, to some of the witnesses that will be called to you, circumstances of his own connexion and transaction in the business, which I have been opening to you, with express and clear and pointed reference to these models, to the tube, to the arrow, and to the other particulars that I have opened.

Gentlemen, in the course of the voyage this vessel was taken by a French Corvette, the La Vengeance: she was carried into Brest: you will hear from the witnesses the conversation, that passed between them and Mr. Crossfield, when this capture took place: the satisfaction, which he expressed that he had got even out of that situation of danger, which he conceived himself to be in whilst he was a part of the crew of any English ship: the satisfaction,

satisfaction, that he had in having been captured by a French frigate, and taken into that Country where he would be safe. You will hear what the whole of his demeanour was whilst he remained on board that French ship which captured him, and when he was in the harbour of Brest. He was first removed, in consequence of conduct, the details of which will be given by the witnesses as connected with this business, from the French Corvette into another vessel called the Elizabeth, which was an English ship, that had been captured by the French, and out of her into another vessel, which was called the Humphries, and there are persons in respectable situations from among the prisoners, that were detained in each of these vessels to state to you evidence which, without detailing it to you particularly, I think can leave, if it is entitled to any credit, no doubt upon your minds that, if Mr. Crossfield was concerned in the fabrication of these instruments, or the drawing of these models, the intent, with which he was concerned in that fabrication and that drawing, was most distinctly the purpose and the intent charged in this indictment, *i. e.* the intent to kill the King.

Gentlemen of the Jury, you will not be surprized if you hear from witnesses, whose testimony will be given to you, that Mr. Crossfield, being carried into Brest under such circumstances as I have stated, was rather in the situation of a superintendant over the English prisoners on behalf of the French, than as a companion with those unfortunate persons who had been captured by the French, and were detained in their prison ships there. I have reason to think that you will also find that it was his project either to remain there or to go into Holland. In a course of time however cartel ships were to come over into this Country; with what intention Mr. Crossfield came over into this Country it is not for me to examine nor to insinuate. You will collect this yourselves from the testimony which those witnesses will give you: but you will hear circumstances which are remarkable enough—that Mr. Crossfield was constantly in company with the Commissary of the French prisoners—that he will appear, according to the testimony of one of the witnesses, to have gone ashore a day or two before these cartel ships left Brest, in order



to meet a member or members of the Convention; that shortly before he left that Country he took the name of Wilson: that in his own hand writing he was mustered among the prisoners by the name of Wilson, as having been captured by the *La Vengeance*, not out of this vessel called the *Pomona*, but out of a vessel called the *Hope*; for what purpose he changed his name, or for what purpose he changed the name of the vessel, in which he was captured, it will be for you to determine, when you have heard the whole of the evidence.

The witnesses will also state to you the circumstances which took place when the prisoners were put on board the cartel ships, and you will see that it was familiar to the Commissary of the French prisoners, that this man should pass by the name of Wilson, as having been captured in the *Hope*, and that under that false name he should come over to this Country. Gentlemen, you will also hear the witnesses inform you that in the course of the voyage between Brest and this Country, Mr. Crossfield distinctly desired one of them, the only one I believe who was in the vessel in which he came over, not to state his name, and not to state those circumstances of conduct and the declarations which had taken place whilst he and that witness were detained together in the harbour of Brest. They landed I think at Fowey in Cornwall, in the neighbourhood of Mevagissy. Some of these seamen, the witnesses, who are persons in respectable situations on board ships, mates and officers, thought it their duty, under a very different impression with respect to Mr. Crossfield's conduct, than perhaps that which they might have had, if they had known what had been passing in this Country, but yet under an extremely serious impression in their minds, to go instantly to a magistrate to inform him what had passed in France, with respect to the conduct of this person. In consequence of that charge made by persons, who knew nothing of what had been passing in this Country, except so far as the circumstances that had been passing in this Country had been related by the prisoner himself, the prisoner was apprehended; being apprehended, it will be in evidence before you that, as he went before the magistrate from Fowey or Mevagissy to the County Goal,

Goal, that he intimated to the persons, who were conducting him there, that it might be for their interest to permit him to escape: he stated to them that a sum of five-shillings was all that they could expect for the execution of the duty, which they were then upon: that he had the means of giving them much more. These persons will state to you the whole of the conversation which passed, and on the suggestion I think of one of them that the plan would not answer the purpose of Mr. Crossfield, because the driver would still be to be disposed of, and asking the question what would become of the post boy, the answer given to that was that the post boy might be disposed of by the use of a pistol which one of these officers had.

Mr. Crossfield was brought up before his Majesty's Privy Council, and he was committed to the Tower, and in consequence of all this additional testimony, which has immediate relation to Mr. Crossfield, but which connects itself with the circumstances which have before been stated with respect to the other prisoners, it became a matter of duty to submit the whole of the case to a Grand Jury of the Country. They found the Bill, the prisoner's deliverance upon which is now before you.

I have studiously forborne to mention several circumstances which relate more particularly, and more especially to other persons whose names are upon this record. If I prove this case, as I am instructed to say I shall prove it, and if I prove it as I have opened it to you, I apprehend there can be no doubt of this prisoner's guilt. If that be the result of the testimony, which is given to you, Gentlemen, though it is a painful duty, it is a duty absolutely incumbent upon me, to ask at your hands, on the behalf of the Country, the verdict of guilty. On the other hand, if you are not satisfied that the offence of High Treason according to the statute, is proved by evidence according to law, against the prisoner, certainly you do no more in that case, than your duty to your Country requires, in acquitting the prisoner.

You have before you a case of great importance. It is a case, which I am sure you will listen to with great attention. I am confident that you will decide it with unimpeachable integrity, and in your verdict, whatever it may be, I hope the Country

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will feel a perfect satisfaction that they have had the case deliberately considered, and honestly decided upon, by the twelve men, whom I have the honour to address myself to.

*Lord Chief Justice Eyre.* Mr. Attorney General you do not open any particular conversation upon the point of connexion of this instrument with the use that you suppose was meant to be made of it; if you in your judgment conceive that the conversation that did pass will support that connexion, I shall be so perfectly satisfied with that declaration, that I think we may go on; if it were otherwise, an observation would occur upon the case as you have opened it.

*Mr. Attorney General.* I will state why I did not mention the particulars of the conversation, I think it is better the witnesses should state the conversation in their own way of stating it, than that Counsel should undertake to make a representation of it; I understand myself to be pledged to the Court, to this, that the conversation was the most direct that can possibly be stated for the purpose of proving an intention as connected with the instrument.

*Lord Chief Justice Eyre.* I am perfectly satisfied with that declaration.

*Mr. Attorney General.* Yet if the Court think it the better way that I should state in detail the conversation, I am perfectly ready to do it. "Damn me I was the ringleader of the three that intended to blow a dart at his Majesty."

*Lord Chief Justice Eyre.* You have said quite enough for my satisfaction.

*Mr. Attorney General.* My reason for not stating the particulars of the conversation which this man had with each of the witnesses, was this, and no other; I could have represented generally the nature of the conversation, but I have collected an opinion in which I may be wrong, that it is more just towards the prisoner, after generally stating to a Jury that conversations were held of such and such an effect, to leave the detail of the particulars to the witnesses, that the witnesses account of it may make the due impression upon the mind of the Jury, rather than to make a representation myself, where if I happen to be mistaken, I may create a prejudice in the mind of the Jury.

EVIDENCE



## EVIDENCE FOR THE CROWN.

*John Dowding, (sworn)*Examined by *Mr. Law.*

Q. In the month of September, 1794, where did you live and work?

A. I worked with Mr. Penton, in New-street-square, No. 32.

Q. What is Mr. Penton's business?

A. A brass-founder.

Q. Do you remember being in his employment on the 8th of September, 1794?

A. Perfectly well.

Q. Do you recollect on that day any men coming to his house, who were not known to you?

A. I was called down on the 8th of September, by the clerk; when I came down into the counting-house there were three men standing there.

Q. Do you recollect any thing particular of the person of one of them?

A. One of them was a lame man.

Q. Did you see that man afterwards so as to enable you now to say who that lame man was?

A. Yes.

Q. Who was that lame man?

A. Upton—one of the others was a tall man.

Q. Do you now know who the other two men were?

A. Not to my knowledge.

Q. If you saw them again should you recollect them?

A. I cannot say.

Q. What did they ask you for?

A. When I came into the counting-house they asked me if I could make them a tube, I asked them what sort of a tube, they said it was to be three foot long, the eighth of an inch thick,

five-eighths of an inch inside the bore, and to be seven-eighths the outside; it was to be quite perfect, and the inside was to be quite a smooth cylinder.

Q. Did you, upon that, shew them any part of a tube?

A. I asked them what sort of a tube it was to be—they asked me what the price would be—I told them I could not tell—they asked me if I could tell to a few shillings—I told them I could not, as my master was not within—then I shewed them a piece of a tube.

Q. Was that the piece of tube you shewed them? (*shewing the witness a brass tube.*)

A. It was a piece of a similar size; they said that would do if it was smaller inside, that it was of the right size the outside, but it must be thicker, and then the bore would be less.

Q. Did you ask what it was for?

A. I did not then, they asked me then if I could not tell them nearly what the price would be; I told them no, I could not, because it was an out-of-the-way job, and I must make tools on purpose to make it; that I must make a tool to draw it on, to make it smooth inside.

Q. Did you ask them what was to be the use of it?

A. I told them if they would tell me the use of it, I could be a better judge how to make it, and, perhaps, could make it better for their use; they answered, it was a secret; it was Upton made answer it was a secret, and the others seemed to agree with him, they all seemed to be in one voice, saying, that it was a secret.

Q. Did you undertake the job?

A. I did not.

Q. Did you give any reason why you would not undertake it?

A. Yes;—When I was talking of making things for it, he asked me if I knew what the price of it would be, I said I could not tell the price of it.

Q. Relate what more passed when you were present?

A. When they asked me about the price, I told them it was rather an out-of-the-way job, and that to make it quite parallel in

in the inside, I must make tools on purpose to make it; they asked me how much the expence would be, I told them I could not tell; they asked me if I could not tell to a few shillings, I said I could not, that my master was not within, and I was very busy myself; I told them at last that it was a job not worth while undertaking as I was quite busy; I told them then as I said before, that if they would tell me the use of it, I could be a better judge how to make it, and, perhaps, could make it better for their use, they answered me it was a secret.—Then they produced a piece of tube that they had bought before at our house, and had some money returned, which was, I think, tenpence; the money was returned to Upton.

Q. Who did they deliver that back to?

A. To me; but the clerk returned the money.

Q. What is his name?

A. Mason; but he is not in our service now; it was such a bit of tube as this, it was of the same size.

Q. Did they all seem to be concerned in the same business?

A. They appeared to be of the same sort.

Q. You stated, that what one said, the rest assented to?

A. Yes; they seemed to be the same company, what one said the others stood to; but as to taking my oath to the people I cannot, if I was to see them perhaps.

Q. What passed after returning the tube?

A. Nothing else passed, they went away.

*John Dowding,*

Cross-examined by *Mr. Adam.*

Q. This you say passed on the 8th of September, 1794?

A. Yes; our books will shew it.

Q. Three persons came together?

A. They were together when I came down; I cannot say whether they came together into the counting-house.

Q. The only one of these that you can speak to positively is Upton?

A. I never saw any of the rest.

Q. You never saw any of the others either before or since?



A. Upton I have seen since. I can swear to him.

Q. But the two others you had not seen before nor since?

A. Not to my knowledge.

Q. You talk of a tube that they had got at your house being brought back, and ten-pence being returned to them; what do you mean by that—do you mean the same three persons?

A. There was but one person returned it, all three could not join hand in hand.

Q. Were all the three persons together, at the time of returning it?

A. They were as close as I am to this gentleman next me.

Q. When did they get the tube that they returned?

A. I cannot say.

Q. How can you tell that they got that at your house?

A. The clerk returned the money to them.

Q. You cannot say any thing, of your own knowledge, about the tube that was returned.—There was a tube got from your house?

A. Yes; or we should not have returned the money to them.

Q. Got by Upton?

A. I cannot say which of them got it.

Q. The money was returned at that time?

A. It was.

Q. You say Upton was the person who spoke?

A. He was the person that spoke the most, the rest joining sometimes.

Q. Do you recollect any thing particularly that Upton said?

A. He was the person who spoke to me when I came down, and asked me if I could make a piece of tube.

Q. Then you discoursed about the price of it?

A. Not then, it was afterwards.

Q. Did you ask any particular price?

A. I asked no price at all.

Q. Did you say it would be a thing of great cost?

A. I said it would be expensive.

Q. When they asked how much expence, did you say how much?

A. No.

*A.* No.

*Q.* Then you gave them no idea of, whether it would cost them a guinea, five guineas, or ten guineas?

*A.* Being a journeyman I could not tell.

*Q.* The discussion about the price was quite general?

*A.* Yes.

*Q.* Can you swear, positively, that these persons were present during the whole conversation between you and Upton?

*A.* I can swear, positively, that there were three in the room all the time.

*Q.* Are there not women employed in your house in lackering brass?

*A.* There are.

*Q.* Does the operation of lackering brass go on in the same place, or in an adjoining one?

*A.* In the same house.

*Q.* In the same apartment?

*A.* Not in the same room.

*Q.* Therefore, if any of these persons went to a woman that was lackering brass, of course they must have been in a different apartment from that in which the conversation is supposed to have passed with you?

*A.* They did not go out while I talked with them, they might before I came down—to my knowledge they did not—I did not see any of them go there.

*Q.* You cannot speak to the persons of the other two you never saw them before?

*A.* Not to my knowledge.

*Q.* Nor since?

*A.* Not to my knowledge.

*Q.* And the thing went off entirely upon your saying, it could not be done but at some certain expence?

*A.* Yes.

*Q.* Of the three, Upton was the person who spoke most?

*A.* Yes.

*Q.* I think you said, that when it was told you it was a secret, it came from Upton's voice?

A. I did not hear them all, but I can swear Upton said that; but they were all just together.

Q. The two other persons did not say any thing that you can charge your memory with?

A. No, I cannot.

Q. Did they say any thing about its being a secret?

A. It was just as they were going away it was said it was a secret.

Q. And its being a secret came from Upton's voice, and not from either of the others?

A. I cannot swear to any other person's voice, they all seemed to join together, but Upton's voice I heard in particular.—As for the others voices I cannot tell.

*Joseph Flint, (sworn.)*

Examined by *Mr. Garrow.*

Q. You are, I believe, a brass-founder, in Cock Lane, Snow Hill?

A. Yes.

Q. Do you remember being applied to, in the month of September, 1794, to attend any persons in respect to a brass tube that was wanted?

A. I do.

Q. Can you recollect what day of the month it was?

A. No.

Q. What day of the week?

A. No.

Q. Do you recollect what hour of the day?

A. It was some time after dinner, I believe.

Q. Do you remember what part of the month the anniversary of his Majesty's coronation falls in?

A. On the 22d of September.

Q. Was it before or after the 22d of September?

A. Being called in January, 1795, I made an enquiry among the men.

*Mr. Garrow.* Do not tell us any thing that is the mere effect of information of others.—But have you, after an enquiry, been



been able to satisfy your own mind in what part of the month it was ?

*A.* Not at all.

*Q.* What time of the day was it ?

*A.* I believe immediately after dinner.

*Q.* You were called by your servant to attend to these persons ?

*A.* By my apprentice, James Hubbard.

*Q.* How many people came to you ?

*A.* Three persons.

*Q.* Did you make any observation upon the person of any one of them ?

*A.* One I observed to be a lame man.

*Q.* Did you observe whether he had any iron on or not ?

*A.* No ; I observed one to limp as he was going out at the door.

*Q.* Relate what passed between you and those persons.

*A.* They asked, first of all, for a long pistol-barrel ; I produced a musketoon-barrel to them : it was observed that would not do, they did not want it plugged up at the end ; from that I observed, that I apprehended it must be a straight cylinder that they wanted ; they said it was ; that it must be about five-eighths of an inch diameter in the bore, and the eighth of an inch thick ; and they said, if I would cast it, and bore it, they would finish it themselves. I told them, I should not undertake to do it without they brought a pattern : one of them observed, would not a rocket-case do ; I said it would, if they plugged up the end,

*Q.* That was for a model ?

*A.* Yes.

*Q.* What was to be the length ?

*A.* There was no length specified at that time ; they went away after that. I believe one of them asked how long it would take making, to which I answered about three days.

*Q.* During the time these persons were with you, did they all take a share in the conversation, or was it confined to any one of them ?

*A.* The

A. The lame man seemed to be the principal.

Q. Did the others interfere in the course of the conversation?

A. I know it was not the lame man that asked me as to the time when it might be done.

Q. In general it was the lame man that conversed with you upon the subject?

A. In general it was.

Q. I believe, since the time of this conversation, you have seen a person of the name of Upton?

A. I saw him in September, 1795.

Q. Did you, when you saw him then, recollect having seen him before?

A. I did not.

Q. Did you know whether he was the lame man that conversed with you?

A. I cannot say.

Q. Is that all you know upon the subject?

A. Yes.

*Joseph Flint,*

Cross-examined by *Mr. Gurney.*

Q. When you were called down, you say, these persons were in your shop?

A. Yes.

Q. Who was the person that spoke to you first?

A. I believe it was the lame man.

Q. Do you recollect any thing that either of them said besides the lame man, except asking as to the time it would take making?

A. There was something respecting a rocket-case, but I cannot recollect now what it was.

Q. Every thing else passed between you and the lame man?

A. Yes.

*Joseph Flint,*

Re-examined by *Mr. Garrow.*

Q. Did the question with respect to the time that would be occupied

occupied in doing the job relate to that about which the lame man had been conversing ?

A. Yes ; the time it would take to make the tube.

Q. Of which the other had been speaking ?

A. Yes.

Q. Were you examined before the Privy Council ?

A. Yes.

Q. Did you see Upton there ?

A. I saw him in September, 1795.

Q. Are you able to say with certainty whether Upton was the person with whom you conversed ?

A. I cannot say that.

*Thomas Bland, (sworn.)*

*Examined by Mr. Wood.*

Q. What is your business ?

A. A brass-founder.

Q. Where do you live ?

A. At No. 40, in Shoe Lane, Fleet Street.

Q. Do you remember any body coming to your shop in September, 1794.

A. I do, very well.

Q. Can you tell what time in September it was ?

A. I cannot tell the day.

Q. Was it in the beginning or the end of the month ?

A. I cannot say.

Q. How many persons came ?

A. First two men came, and in five minutes one man came to enquire after these two men.

*Lord Chief Justice Eyre.* Do you mean that one man came in while they were there, or after they were gone ?

A. After they were gone.

*Mr. Wood.* What did the two men come for ?

A. They asked for a tube or a barrel ; I told them it was not in my line of business ; if they wanted a barrel they must apply to the clock-makers, or if they wanted a tube they must apply to those that draw tubes.



Q. Did they say what they wanted it for?

A. No; they went away, and then another came and asked for the two gentlemen.

Q. Do you know who that man was?

A. I think the third that came in was Peregrine Palmer.

Q. That was all that he said?

A. Yes, to the best of my knowledge: they were gone down the lane, he went after them.

*Thomas Bland,*

Cross-examined by *Mr. Adam.*

Q. Do you know Palmer?

A. I have seen him.

Q. Did you know him at that time?

A. I did not.

Q. How long after was it before you knew Palmer's person?

A. I was never acquainted with Palmer; I saw him before the Privy Council, they told me his name was Palmer; I said, to the best of my knowledge, that was the third man that came to enquire for the other two.

Q. You do not know who the other persons were?

A. One was a lame man.

Q. They staid but a few minutes?

A. A very few.

Q. And you did not supply them with any thing of any sort?

A. Nothing at all.

*David Cuthbert, (S<sup>r</sup>orn.)*

Examined by *Mr. Law.*

Q. Where do you live?

A. In Graham Court, Arundel Street.

Q. You are a mathematical instrument maker?

A. Yes.

Q. Do you remember calling upon Upton at any time?

A. Yes, very well.

Q. What led you to call upon him?

A. I called upon him on purpose to subscribe a little money  
for

for the wives and children of those people that were in prison under suspicion of High Treason.

Q. Do you remember at that time having any conversation with him?

A. Very little at that time.

Q. Does that little dwell upon your memory?

A. It was so insignificant that I took no notice of it:—I do not know what passed at all the first time; the second time I called upon him on purpose to know how the subscription went on; instead of answering concerning the subscription, he answered me concerning the Corresponding Society.

Q. We won't go at large into that.—Was there any thing that led to the production of any instrument?

A. No such a thing.

Q. Do you remember calling upon him during Bartholomew fair?

A. I had given him an invitation when I first called there, seeing he was a watch-maker, to come and look at an engine of mine, which I thought very likely might be a treat to him, as being in that line; it was rather out of the way, as such, he did come; that was nearly about Bartholomew fair time; the distance between the times that I had called on him and that time I cannot well determine, but the way that I know that he called upon me at Bartholomew fair time was, a son of mine was lying ill at that time, and I remember very well he was making an observation——

Q. We must not hear what your son observed to you; but, when you saw Upton, do you recollect having any particular conversation with him about the power of air?

A. Yes, exactly so; he saw an air-pump lying in my shop, I explained it to him in the best manner I could; I shewed him an air-gun, and explained it in the best manner I could.

Q. After having explained it to him, did he come again to look at this air-gun?

A. He did, next day.

Q. Did he come alone?

A. No, there was a man with him.

Q. Do

Q. Do you recollect any thing particular about the man that came with him?

A. No; Upton had displeased me in his conversation in the second interview I had with him, and therefore I neither liked him nor his acquaintance.

Q. Did you observe any thing particular about the hand of that person?

A. No—the gentleman that came with him told me he was very fond of shooting, and that he had lost some of his fingers by the explosion of a gun; but whether he had or had not, I do not know, for I did not look at his hand; I was rather disgusted with Mr. Upton as I said before, and I did not pay any regard to him nor his acquaintance.

Q. But he said his hand had received an injury by the explosion of a gun?

A. He did.

Q. Did he handle the gun, or what did he do?

A. He viewed it, and said it was a handsome piece.

Q. Did he apply to you to do any job for him?

A. Upton asked me if I wanted a job, I replied I had got more business than I could do.

Q. The person who was with him was by at the time when he asked you to take this job?

A. The person that was with him was on the outside of the door and he was in the door-way, it was just as he was leaving the house.

Q. That man is the person that handled the air-gun?

A. He did.

Q. And praised it?

A. He did as a handsome piece, which it really was.

Q. Had you any conversation with him about the properties of air?

A. Not a word, I was at dinner—I did not get up from my seat all the time they were there, till they were just a going, and that was merely because I thought they stopped too long.

Q. Have



Q. Have you seen the man who came with Upton any where since?

A. Never in my life, nor I don't think I should have known him six hours or three hours after he left my place, I took so little notice of him.

Q. You had so great a dislike to Upton that you would not let yourself know the persons that came with him?

A. I did not take notice of him, nor I do not know that I should have known him if I had met him in the street a minute after.

Q. Did you see any person afterwards with Upton before the Privy Council?

A. No; I never saw Upton at all at the Privy Council.

Q. Did you see any person before the Privy Council who had lost any of his fingers?

A. Not that I know of; I was at the Privy Council when Mr. Dundas presided, and there was a man of the name of Dennis, a sailor, in the lobby; at the same time a man came out, he said there he goes—I asked who? why, said he, Crossfield—said I, do you know him—Yes, said he, damn his eyes, I would know his ashes was he burnt, or any such damned rascal as he was; so I understood that to be the man.

Q. I do not ask you to declarations of other people; but I ask you whether you did not see a person who had a defect in his fingers, where the Privy Council were sitting?

A. No; I took the man that came with Upton to me, to be a taller man—almost as tall as Mr. White.

*David Cuthbert,*

Cross-examined by *Mr. Gurney.*

Q. Do you know in what part of the month of September Bartholomew Fair is held?

A. Somewhere about the 9th I suppose—it is all supposition, for I do not know.

Q. You say you invited Upton to come to your house to look at an engine of yours, which you thought might entertain him?

A. Yes.

A. Yes.

Q. Having an air-pump in your shop induced you to talk to him about the properties of air?

A. Yes.

Q. Had he asked you any thing about the properties of air before you introduced the subject?

A. I do not think he did.

Q. Did he appear at the time to be conversant with the properties of air?

A. I do not think he was.

Q. And therefore he asked you for the purpose of enlightening his ignorance?

A. Yes.

Mr. Law. Was this at the beginning of Bartholomew Fair or when?

A. I cannot tell.

*Mr. Peregrine Palmer, (sworn)*

*Examined by Mr. Garrow.*

Q. I believe you reside in Barnards Inn?

A. I do.

Q. You are an Attorney by profession?

A. I am.

Q. How long have you been acquainted with the prisoner Crossfield?

A. I believe about fifteen or sixteen years.

Q. What is he by profession?

A. He is a physician by profession.

Q. Where did he reside?

A. He has resided at a number of places since I first knew him.

Q. Did he reside in London in the latter part of the time that you were intimate with him?

A. He resided in Dyers Buildings, Holborn; that was the last place I knew him live in.

Q. Were you very intimate with him?

A. Yes; there was a great intimacy between us.

I

Q. Did

Q. Did you belong to any club or society of which he was a member?

A. Yes.

Q. What might it be?

A. I suppose you allude to the Corresponding Society. I did belong to several societies of which he was a member, among others I was a member of the London Corresponding Society.

Lord Chief Justice Eyre. Was he also a member of that Society?

A. I do not know whether he was or not; I have seen him there.

Mr. Garrow. I understand you to have answered to my first question, that you supposed I alluded to the Corresponding Society; I ask you upon your oath have you any the least doubt that he was a member of that Society?

A. I have not.

Q. You have good reasons to know—You was a delegate was not you?

A. I was at one time.

Q. And a chairman of the committee?

A. I scarcely know what you mean by a chairman.

Q. I ask you upon your oath whether you were not a chairman of a committee of the London Corresponding Society?

A. I consider a delegate as a kind of a chairman.

Q. Did Mr. Crossfield attend the meetings pretty regularly?

A. I believe I may have seen him there about three or four times; I cannot tell the exact number at this distance of time.

Q. Was he of the same division with you?

A. Yes.

Q. I ask you upon your oath, did not he attend very regularly?

A. I have seen him there several times.

Q. Was not he a regularly attending member?

A. I have seen him there frequently—three, four or five times, I believe—I cannot tell the number of times at this distance.

Q. Do you know a person who was called Upton?

A. Yes.



Q. Do you remember in the month of September 1794, accompanying the prisoner Crossfield to Upton's house?

A. Yes; I do.

Q. About what time in the month was it?

A. In the beginning of the month; I cannot tell the day.

Q. Did you and Crossfield accompany Upton to any place?

A. Yes.

Q. Where did you go to?

A. A house, I do not know whether it is in New-street or in New-street-square.

Q. In the neighbourhood of Gough-square?

A. Yes.

Q. Was it a house of any trade or business?

A. I believe it was a brass-founder's.

Q. You and Crossfield and Upton went there together?

A. Yes.

Q. What passed at the brass-founder's when you were so in company?

A. I know nothing of what passed; Upton had some business there, as I understood.

Q. I am asking what passed at the brass-founder's when you were present making one of the company, and I desire you to state it upon your oath?

A. I have no recollection of any thing that passed there.

Q. Attend to what you are about and speak the truth?

A. I know what I am about, and shall speak nothing but the truth.

Q. How long were you in company with Crossfield and Upton at the brass-founder's in New-street?

A. A few minutes.

Q. You can recollect what passed?

A. I can recollect nothing at all about it.

Q. That will not satisfy the Court, I should think?

A. I will say the truth, I can say no more about it.

Q. Was there any business transacted at this brass-founder's?

A. I do not know what the business was—it was Upton's business

business as I understood; Upton said he had some business at this brass-founder's, what his business was I know not.

Q. Nor am I asking you, except as you collected it from what passed on the spot; what passed there?

A. I cannot recollect; it was something in the way of his own business.

Q. Did you see any thing produced at the brass-founder's?

A. Not to my recollection.

Q. Will you swear there was not?

A. I will not; but I have no recollection of any thing.

Q. After you had finished your business there, where did you go?

A. The next place we went to, was a house in Shoe-lane I think.

Q. What business was carried on there?

A. The same business.

Q. A brass-founder?

A. Yes.

Q. You went immediately from the house we first talked of, to the house in Shoe-lane?

A. Yes.

Q. How long were you there in company with Crossfield and Upton?

A. Not at all; I did not go into the house.

Q. You waited for them without?

A. Yes.

Q. How long were they there?

A. A very short time indeed.

Q. How long do you think?

A. I suppose a minute or two minutes, a very short time.

Q. Where did you go to from the brass-founder's in Shoe-lane?

A. To a house in Cock lane.

Q. You did not go with them into the house in Shoe-lane?

A. I did not.

Q. Upon your oath did you go in afterwards to enquire after them?

A. I did.

Q. It would have been as well to have told us that—then after they were gone from the brass-founder's in Shoe-lane you went in to enquire where the two gentlemen were gone?

A. I did.

Q. In consequence of the information you received there of your two friends, you went after them?

A. Yes.

Q. How soon did you overtake Crossfield and Upton?

A. I overtook them in Shoe-lane; I was informed they were just gone out.

Q. Then you walked together to Cock-lane?

A. Yes.

Q. To what house of trade there?

A. To a person of the same business.

Q. A brass-founder?

A. Yes.

Q. Did you go in with them there?

A. Yes; I believe I went into the shop.

Q. Have you any doubt about it?

A. No; I have not.

Q. You three went into the brass-founder's in Cock-lane together?

A. Yes.

Q. What passed there?

A. I know nothing about it, only there were some directions given by Upton to the brass-founder, what these directions were I do not know.

Q. Directions given with respect to what?

A. I do not know—something in the way of Upton's business.

Q. With respect to doing what?

A. I have no recollection, I am not a brass-founder; I do not know.

Q. Do you know what a tube is?

A. Yes; certainly any man must know what a tube is.

Q. Was



Q. Was there any conversation there about a brass tube and its dimensions?

A. I have no recollection of any thing of that kind.

Q. Recollect that you are upon your oath?

A. I know that perfectly well; and therefore I shall say nothing but the truth.

Q. Was there any conversation about a model?

A. There might be such conversation pass; but I do not know whether there did or not.

Q. Do you mean to swear you do not recollect any thing about a model for a brass tube—about its dimensions—or how it was to be applied?

A. I do swear I do not recollect about the particular business.

Q. I am not asking you about particulars, but give us some information of what passed; was any brass tube produced by any body?

A. I have no recollection that there was.

Q. Have you ever seen any thing like this before? (*showing the witness a brass tube*)

A. I recollect I saw that at the Privy Council.

Q. Did you never see this before, as a subject upon which persons were conversing at the time you saw it?

A. I do not recollect that I did.

Q. Did you ever see these before? (*showing the witness the models*)

A. No; I never did.

Q. I am afraid you will forget your own christian name by and by—you have been long acquainted with Crossfield?

A. I have.

Q. And are well acquainted with his hand-writing?

A. Upon my word I cannot say that I am.

Q. Upon your oath cannot you venture to swear to his hand-writing?

A. There is but one thing that I can swear to his hand by, that is the signing of his name.

Q. You have frequently seen him write?

A. I have.

Q. Have you ever corresponded with him?

A. I never received five letters from Mr. Crossfield in the course of my acquaintance with him.

Q. Look at this paper, (*shewing it to the witness*) and tell me whose hand-writing you believe that to be?

A. I cannot swear to this hand-writing.

Q. I do not ask you to swear to it, and you who are an attorney know I do not—upon the oath you have taken whose hand-writing do you believe that to be?

A. I cannot swear to a belief of this hand-writing.

Q. Do you mean to swear that you have no belief upon the subject?

A. I have not.

Q. Do you mean to swear that you believe that is or not the hand-writing of a man you are acquainted with?

A. I do not know enough of it to be able to form an opinion upon it.

Q. Now open this paper and look at it; have you ever seen it before?

A. I do not know upon my word.

Q. I am sorry to be obliged so often to admonish you, that you are upon your oath?

A. You might save yourself all that trouble, I know it very well.

*Lord Chief Justice Eyre.* You recollect that when you answer upon your word, that is not exactly answering on the obligation that you are speaking under, that was the occasion of your being reminded that you are upon your oath?

A. I consider that when I first came into Court, I was sworn to speak the truth.

*Lord Chief Justice Eyre.* But it is not the proper manner of answering; to say upon my word it may be so and so.

A. It may not be a proper way of answering; but I consider that every thing I am saying in this Court, I am saying upon my oath.

*Mr. Garrow.* Then upon the oath you have taken, have you ever seen that paper before?

I

A. There

*A.* There were some papers shewn me before the Privy Council, whether this is one I cannot tell; upon my oath I do not know.

*Q.* Have you the least doubt that that paper was shewn to you before the Privy Council, that you was interrogated to the subject, and that you gave answers respecting it?

*A.* I do not know whether this piece of paper was shewn me or not; there were some pieces of paper shewn me.

*Q.* Do you mean to swear now, that you have no belief whose hand-writing that is, after looking at it?

*A.* I can form no belief about it.

*Q.* You cannot be sure that you ever saw this paper before I handed it to you?

*A.* No.

*Q.* Have you ever seen any paper which appeared to you to describe the same subject; I am not speaking of your examination at the Privy Council, but had you before you were examined by the Privy Council seen a paper containing such drawings as I have shewn you; I tell you now that I have your examination in my hand—upon your oath had you before your examination by the Privy Council ever seen, and I shall ask you presently in whose custody, any paper with similar drawings to this?

*A.* I do not recollect any thing of the kind.

*Q.* Are you equal to the swearing that you never had?

*A.* I cannot swear that I never saw such, but I have no recollection of any thing of the kind.

*Q.* Have you any belief of the kind?

*A.* I can form no belief.

*Q.* I ask you once more upon your oath have you never said when you was upon your oath, that you had seen a paper similar to that?

*Mr. Adam.* Does your Lordship think this is the proper way of examining a witness in chief?

*Lord Chief Justice Eyre.* The whole course of this species of examination is not regular. This is a witness for the Crown, if he disgraces himself, which it is the tendency of this examina-



tion to make him do, they lose the benefit of his testimony. The idea of extracting truth from a witness for the Crown who disgraces himself, is in my apprehension, and always has been, a thing perfectly impracticable, for the moment he has gone to the length of discrediting his testimony, by the manner in which he shuffles with your examination, there is an end of all credit to him. You recollect upon a very solemn occasion, the Judges were all of opinion, that that kind of examination on the part of a prosecution was improper, for that it always ended in destroying the credit of your own witness.

*Mr. Garrow.* My object was to refresh his memory. Be so good as look at this paper (*another paper*) do you know it?

*A.* I do not.

*Q.* Do you recollect ever seeing it before?

*A.* I cannot say I recollect ever seeing it before, but it appears to me to be a paper similar to what was shewn me at the Privy Council.

*Q.* You are correct in that—that is the paper that was shewn to you before the Privy Council—supposing that to be the same paper, do you recollect ever to have seen it before it was shewn to you at the Privy Council?

*A.* I do not.

*Q.* Do you know whose hand-writing it is?

*A.* I do not; it appears to be a different hand-writing from the last you shewed me.

*Q.* Nor the drawings whose they are?

*A.* No.

*Q.* Do you know whose hand-writing this is?

*A.* It is a hand-writing I am not acquainted with.

*Q.* The last place that they were at I think was the brass-founder's in Cock-lane—how long were you Crossfield and Upton at the brass-founder's in Cock-lane?

*A.* A very few minutes.

*Q.* Where did you go next?

*A.* To Mr. Hill's in Bartholomew-close.

*Q.* What business does he carry on?

*A.* I believe he is a turner.

Q. A turner in brass or wood?

A. I do not know; I have heard he is a turner.

Q. Is he a member of the London Corresponding Society?

A. He was at that time.

Q. Both Upton and Crofsfield, if I understand you right, accompanied you to Mr. Hill's?

A. They did so.

Q. What passed there?

A. I recollect Upton giving some instructions to Hill for something, I think the word model was made use of, but I am not a mechanic myself; the word model or pattern, or something of that nature was mentioned.

Q. Was any drawing produced upon that occasion?

A. I think I remember Upton producing some drawing?

Q. For what purpose?

A. As instructions for something that Hill was to make.

Q. Was that drawing left with Hill?

A. I cannot say.

Q. You did not see the drawing made at the time?

A. I think Upton made it at the time; but I will not positively swear that.

Q. Do you recollect any thing more that passed at Hill's?

A. No.

Q. Do you recollect any thing else being produced at Hill's besides the drawing?

A. I do not recollect it, there might be such a thing produced, but I have no recollection of it.

Q. After you had left Hill's, where did you go to next?

A. Mr. Crofsfield and I were going somewhere upon some business together; it was merely an accidental business Upton's going with us.

Q. That can be no answer to my present question; which is, where you went to from Hill's?

A. I cannot recollect.

Q. Did you part there, or go any where together afterwards?

A. I believe we parted somewhere thereabouts; I do not recollect going any where after that.

Q. Where

Q. Where did Upton live?

A. In Bell-yard.

Q. How many times do you think, speaking within compass, may you have met Mr. Crofsfield at Upton's?

A. I suppose I might have seen him once or twice before.

Q. How often afterwards?

A. I do not recollect whether I was there afterwards or not.

Q. What is the impresson upon your mind?

A. At the time these things were going on, I had no idea that they were of a nature that I should be called into a Court of Justice to give evidence upon, and therefore I considered them as mere trivial things.

Q. You heard of the circumstance that certain persons were taken into custody upon Upton's information?

A. Yes; certainly.

Q. Where was Crofsfield living at that time?

A. Where I told you before, in Dyer's-buildings.

Q. How soon after the information given by Upton became public, did Crofsfield remove from Dyer's-buildings?

A. I cannot say.

Q. How soon did you miss him from London?

A. I have no recollection upon the subject; I left London about that time myself, I generally go into the West of England about that time in the year.

Q. Perhaps he went with you?

A. He and I went to Bristol together.

Q. How soon after Upton's examination before the Privy Council was it that Crofsfield and you left London?

A. I cannot say.

Q. Was it before or after you knew that a reward was advertised for the apprehension of Crofsfield?

A. Many months before that.

Q. You went to Bristol together?

A. Yes.

Q. When did you go to Bristol?

A. I think in the month of October 1794, but I cannot be certain.

Q. Has



Q. Has Mr. Crossfield any family, or is he a single man?

A. He is a married man.

Q. Did his wife reside with him in town?

A. She did not reside with him at the time you are speaking of—she did not reside with him in Dyer's-buildings I believe.

Q. I meant merely to ask whether his family went with him, or he went alone with you?

A. His wife did not accompany us.

Q. You and he went alone?

A. Yes.

Q. How long did you continue at Bristol?

A. I continued there a few days, and I left him at Bristol, he had some idea of settling at Bristol, as a physician; he went down with that intent.

Q. Did you ever see him at Bristol again?

A. I did not.

Q. Did you see him in any other part of England soon after you left him at Bristol?

A. Yes; I saw him in London.

Q. How soon after you came back to London did he return from Bristol?

A. It was about the time that I was first examined before the Privy Council, that he came to London.

Q. Where did he reside when he came to London?

A. I do not know.

Q. Did he go back to Dyer's-buildings.

A. He did not.

Q. Did you correspond with him whilst he was at Bristol?

A. I think I received one letter from him whilst he was at Bristol, and but one.

Q. Did you write to him?

A. I do not recollect.

Q. I wish you would try to recollect whether you answered his letter when he was at Bristol?

A. I do not recollect whether I did—I did not enter his letter.

Q. Perhaps it might assist your memory, to ask you whether  
you

you addressed to him by the name of Crossfield, or any other name?

A. If I addressed to him at Bristol, it was by the name of Crossfield.

Q. Then did you write to him there or not?

A. I do not recollect; but I do not think I wrote to him at all.

Q. How long did he continue in town after his return from Bristol?

A. I think I might have seen him at the distance of a fortnight or three weeks.

Q. Was this about the time that you were attending the Privy Council from time to time?

A. Yes.

Q. And you do not know where he resided?

A. No.

Q. Where did you meet him?

A. I never saw him but at my own chambers.

Q. Did you ask him where he resided, if you should have occasion to call on him, or to write to him?

A. I do not know whether I did or not—yes, I think I did.

Q. But you did not know where he was to be found?

A. No.

Q. Do you know where he went to after he left Bristol?

A. Only from hearsay.

Q. Did he correspond with you after he left London again?

A. No.

Q. You probably then did not see him again till after he was in custody?

A. I have only seen him once since he was in London, and that was at the Privy Council.

*Mr. Peregrine Palmer,*

Cross-examined by *Mr. Adam.*

Q. You have known Mr. Crossfield for fifteen or sixteen years; was he in the habit of frequently coming to your chambers?

A. Yes;

*A.* Yes; I was upon terms of great intimacy with him.

*Q.* And he came frequently to your chambers in the months of August, September, and October, 1794?

*A.* He did.

*Q.* Did you happen to know at that time the particular state of Mr. Crossfield's health?

*A.* I did.

*Q.* What state of health was he in?

*A.* I know he was in a very ill state of health.

*Q.* Was he under the necessity of taking any medicines to alleviate pain?

*A.* I know he used, at that time, to take large quantities of opium.

*Q.* I think you said, that upon a particular day in September, 1794, but the particular day of the month you did not mention, that you went with him to Upton's?

*A.* Yes.

*Q.* Do you happen to know how long Crossfield and Upton had been acquainted before that time?

*A.* I do not know how long before, some very short time before.

*Q.* How long had you yourself been acquainted with Upton, before that time?

*A.* I suppose a month, or two months.

*Q.* Can you tell whether Mr. Crossfield's acquaintance with Upton, was in consequence of your acquaintance with Upton?

*A.* I believe Crossfield's acquaintance with Upton was by seeing him at a division of the Corresponding Society.

*Q.* Can you tell how long this was antecedently to the time when you went to Upton's house with Crossfield?

*A.* I have no recollection.

*Q.* Upton was a watchmaker, was not he?

*A.* He was.

*Q.* Do you happen to know whether he is a mechanic in any other respect than as a watchmaker?

*A.* I remember seeing at his shop an electrical machine that he had made, which he shewed us as a curiosity.

*Q.* Upton



Q. Upton was a member of the Corresponding Society?

A. He was.

Q. Do you happen to know whether there was any enquiry going forward in that Society, in regard to Upton's character and conduct?

A. I remember he was disgraced in that Society.

Q. Do you happen to know whether any of the persons, who are charged upon this indictment, were among those who disgraced him in that Society?

A. I know that Mr. Le Maitre was one that particularly objected to him.

Q. Do you know of any other?

A. I do not.

Q. Can you tell whether the enquiries, respecting Upton, were going forward about the end of August, or the beginning of September, 1794, and down to the latter end of September?

A. I cannot charge my memory as to dates; about that time I was in the habit of attending some of the meetings of the Society, and it was during that time that this enquiry took place.

Q. Do you recollect at what particular times you were in the habits of attending the Society?

A. I think in the months of August and September, of that year.

Q. You say, that on the day on which you and Mr. Crossfield went to Upton's house, that you went with him to New-street, or New-street-square, you cannot recollect which?

A. There are two or three streets there that are called New-street, and New-street-square.

Q. What was the circumstance which led you to go to Upton's on that particular day?

A. Upton had a watch of mine to repair, Crossfield and I, I think, though I do not mean positively to swear to that particular circumstance, Crossfield and I dined that day together, and I called afterwards with Crossfield upon Upton for my watch.

Q. Do

Q. Do you recollect where you dined that day?

A. I have no recollection.

Q. Do you recollect in what part of the town it was?

A. Somewhere in the neighbourhood of Temple-bar.

Q. Upton lived in Bell-yard?

A. Yes.

Q. Then, for the reason you have given, you called upon Upton?

A. Yes.

Q. And from thence you went to the house, in New-street?

A. Yes.

Q. That was a brass-founder's?

A. Yes.

Q. Did you all three go in?

A. I believe we did.

Q. Do you know who came to you upon that occasion, whether it was the master or the servant?

A. I have no recollection of either the master or servant in the business.

Q. From thence you went to Cock-lane?

A. Yes.

Q. You said you did not go into the house in Cock-lane?

A. No, that was in Shoe-lane.

Q. Did any thing particular prevent your going into the house in Shoe-lane?

A. I recollect I had a natural occasion to stop.

Q. You went in afterwards and enquired whether they were gone?

A. Yes.

Q. And then you saw them in the street?

A. Yes; I followed them.

Q. Was it in consequence of overtaking them there that you went with them to the next place?

A. Mr. Crossfield and I were going together into the city; when I called at Upton's for my watch, Upton said he was going the same way, and would accompany us, that was one reason

reason I know why Upton accompanied us upon that occasion.

*Q.* You went to Cock-lane next?

*A.* Yes.

*Q.* Did you go to any other place that night?

*A.* Yes; I went to Hill's afterwards, in Bartholomew Close.

*Q.* You were asked, by my learned friend, with respect to Mr. Crossfield's place of abode; he lived in Dyer's-buildings?

*A.* Yes.

*Q.* Did he live in family there?

*A.* No, in lodgings.

*Q.* Do you remember to have seen Crossfield about the time Smith, Le Maitre, and Higgins were committed?

*A.* I do.

*Q.* Do you remember to have seen him about at that time, just as publicly as before?

*A.* Yes, just the same.

*Lord Chief Justice Eyre.* Was that after his return from Bristol?

*A.* No, before he went to Bristol.

*Mr. Adam.* Did you see him repeatedly about this time?

*A.* Frequently; I staid in town but a few days before I went to Bristol.

*Lord Chief Justice Eyre.* You went to Bristol soon after Le Maitre, and Smith were in custody?

*A.* Soon after.

*Mr. Adam.* Do you recollect any thing that passed between you and Crossfield respecting this journey to Bristol?

*A.* I know Crossfield intended to go to Bristol three or four months before that time, to see whether it would be an eligible place for him to settle in as a physician; and that he intended to make some experiments upon the Bristol and Bath waters, which he thought might be of service to him in his medical capacity.

*Q.* How long had he this intention before the time we are speaking of?

*A.* For several months before.



Q. How long did you remain at Bristol ?

A. A few days.

Q. And Crossfield with you ?

A. Yes.

Q. Had you frequent opportunities of seeing Crossfield at Bristol ?

A. Yes, every day.

Q. Did he go about publicly ?

A. As publicly as any man could possibly do.

Q. You left him at Bristol, and he remained there some time ?

A. He remained there till the time when I was first called before the Privy Council ; he returned to town about that time.

Q. You saw him then ?

A. Yes, in London.

Q. Did he use any mystery about himself, or his situation then ?

A. No, he did not at the time when I first saw him ; I never made any particular enquiries about it.

Q. Do you know at what time he left London ?

A. I think, the last time I recollect to have seen him, was on the day I was last called before the Privy Council—I was called three times before the Privy Council, in a week or ten days—the last time I saw him was, I think, in the month of January.

Q. Then Upton being called before the Privy Council, when Higgins and Le Maitre were before the Privy Council, was in the end of September ?

A. I think it was in the month of September.

Q. My learned friend asked you with respect to his being advertised, and a reward offered for apprehending him—when did you first see that ?

A. I cannot speak as to the time when it appeared ; but this I know, that it was a considerable time after I last saw him, and a considerable time after I heard that he was failed.

Q. Had you ever any conversation with Upton, with regard to the instrument ?

A. I never had,

*Mr. Peregrine Palmer.*

Re-examined by *Mr. Garrow.*

Q. It will be necessary to ask you one or two questions.—You told my learned friend, that the last time you saw Crossfield, was before he went abroad; was it on the day you was last examined before the Privy Council, before he went abroad?

A. Yes.

Q. Where did you see him that day?

A. At my own chambers.

Q. That was after your return from Bristol?

A. Yes.

Q. You told him you had been examined before the Privy Council?

A. Yes.

Q. Have you been examined more than once by the Privy Council?

A. Yes, three times.

Q. Upon which of your three examinations before the Privy Council did you undertake, if possible, to find Crossfield, and to produce him before the Privy Council as a witness?

A. At my first examination, I think, it was.

Q. How often, between your first and your third examination, did Crossfield visit your chambers?

A. I cannot say.

Q. Was it daily?

A. No, it might be once or twice; when I say once or twice, I do not mean to say that he was no more than twice at my chambers—I cannot particularly say the number of times.

Q. The last time you saw him was on the day on which you concluded your examination before the Privy Council, after you had been examined?

A. I think it was before I attended the Council.

Q. You saw him, probably, in the early part of the day, and went and was examined afterwards by the Privy Council?

A. Yes.

Q. There is one other thing I wish to have explained.—You said

said Crossfield went to Bristol with a view to see whether that was an eligible situation for him to settle in as a physician; and to try some experiments upon the Bristol and Bath waters.—Did he announce himself as a physician newly arrived at Bristol, or at Bath?

*A.* He did not go to practice as a physician, he went to see whether Bristol would be an eligible situation for him to practise as a physician.

*Q.* There is one thing more that may be mistaken unless I put a question upon it.—In your answer to Mr. Adam, you said that before he went for Bristol, he was publicly about here in town?

*A.* Yes.

*Q.* And, I think, you said that though you enquired of him, after his return, you never learned from him where his residence was?

*A.* No.

*Q.* And you only saw him at your own chambers?

*A.* Certainly; and the reason he assigned to me was——

*Mr. Garrow.* I do not ask your reasons.

*Lord Chief Justice Eyre.* It is part of the explanation.

*A.* The reason he stated was this—I told him the circumstance of my being summoned before the Privy Council at the first time; and I acquainted him that his attendance was likewise required, he told me he was engaged to go abroad as the surgeon of a ship; that he had no kind of objection to attend the Privy Council; but he knew nothing of the matter then before the Council; and that his staying in town would be the means of detaining him from going the voyage.

*Mr. Garrow.* You explained to him that the Privy Council wished much that he should attend, and that you had promised to procure his attendance as a witness?

*A.* Yes.

*Q.* To which he answered, that knowing nothing of the affairs that were transacted there, and being engaged to go abroad, he should go, and not continue any longer in town for that purpose?



*A.* Yes.

*Q.* Did you ever communicate, in either of your examinations, to the Privy Council, that the gentleman did not attend because it was inconvenient to his affairs?

*A.* My examination will shew that.

*Q.* Or whether your examination did not close without the Privy Council having the least conception, from any thing you stated to them, that you knew where to find Crossfield?

*A.* I certainly did not know where to find him.

*John Hill, (sworn.)*

Examined by *Mr. Law.*

*Q.* You are a turner?

*A.* Yes.

*Q.* Where do you live?

*A.* In Bartholomew-close.

*Q.* What division of the Corresponding Society were you a member of?

*A.* Division six.

*Q.* Were you acquainted with Upton, in September, 1794?

*A.* I knew him.

*Q.* Do you know Mr. Palmer, who has just been examined?

*A.* Yes.

*Q.* Do you remember Upton and Palmer coming to your house about that time?

*A.* Upton, Palmer, and another man came to my house about that time.

*Q.* September, 1794?

*A.* Yes.

*Q.* Do you remember any question being put to you by Palmer, or that other man, when they came to your house at the time you mentioned?

*A.* Upton asked me if I could turn in wood, I told him yes; he asked me if I would do him a job, I said yes.

*Q.* Did he mention any thing about a sketch?

*A.* No; he began to tell me about what sort of job it was to be—I did not rightly understand, according to what he said

to me, what sort of thing he wanted, but they made a sketch of it.

Q. Look at this paper, is that the sketch?

A. I think that is the sketch that was produced.

*Lord Chief Justice Eyre.* Was it done in ink, or with a pencil?

A. In ink, I believe—I lent them a pen and ink.

*Mr. Law.* I see there is written on the other side “This house to let enquire within.”—Was that written on the paper before they made the sketch upon it?

A. Yes.

Q. Was that a paper of yours they found at your house?

A. Yes.

Q. Were all the three persons you have mentioned, Palmer, Upton, and the third person, to whom you have not given a name, present when that sketch was drawn?

A. Yes.

Q. Had you any conversation with them in which way the thing that was so sketched out was to be done?

A. I asked Upton what it was for, he said it was for something in the electrifying machine way, he told me to bring it to his house, and that I should be paid for it.

Q. Was any thing said how it was to be done?

A. Nothing more than that.

Q. Do you recollect whether Upton, Palmer, or the stranger, sketched that out?

A. The stranger did something to it, to the best of my recollection.

Q. Were there more persons than one that did something to it?

A. I think I did something to it.

Q. Under whose direction did you do that something?

A. Directions from Upton.

Q. Was the whole done between you, Upton, and the stranger?

A. Yes.

Q. Palmer did no part of it?

A. I do not recollect that he did.

Q. There is a straight piece—was there any conversation about doing the straight piece?

A. I asked what it was for, they said it was something in the electrifying machine way.

Q. Was it said how the straight piece was to be done?

A. It was to be quite straight, like a round ruler.

Q. Is that (*the model in wood*) one of the things you made, in consequence of that direction, as a round ruler?

A. I think it is.

Q. Was that the thing you did as a model for the brass-work?

A. Yes, that looks like it.

Q. One was to be done in wood-work, the other in brass-work; you did this as meaning to conform to the directions contained in the sketch?

A. Yes; and I took them to Upton's house, for him to look at them to see if they were right.

Q. Did the persons who bespoke them order you to do so?

A. Upton ordered me to do so.

Q. Which of them told you you should be paid for them?

A. Upton.

Q. Are you sure it was Upton that told you that?

A. Yes.

Q. Are you sure none of the others mentioned any thing about paying for them?

A. Yes.

Q. Do you remember who you saw when you went to Upton's?

A. I saw a man playing at cards with him; I do not know who that man was.

Q. Did you see Mrs. Upton there?

A. I cannot recollect whether I did; only I recollect perfectly well he was playing at cards with a man.

Q. Was there no woman of the party?

A. I think I did see a woman; she came into the place in the mean time, I think.

Q. And



Q. And you left these things?

A. I did.

Q. When did you carry the things to Upton?

A. About three days after they were ordered.

Q. Do you happen to recollect the day of September when they were ordered?

A. Towards the latter end of September, I believe it was.

*John Hill,*

Cross-examined by *Mr. Gurney.*

Q. You have stated that you yourself were a member of the Corresponding Society—of that Society Upton likewise was a member?

A. Yes, he was.

Q. Have you any knowledge of any enquiries that were going forward at that time in the Corresponding Society respecting Upton—were there any imputations thrown upon Upton's character in the Corresponding Society?

A. There were.

Q. Do you know any of the persons who were principally concerned in throwing those imputations—was Mr. Le Maitre active in that?

A. I cannot say exactly; Higgins said something which affronted Upton, when they were about to investigate his character.

Q. Were you present at any other meeting when any person whatever brought any charges against Upton?

*Mr. Law.* I object to that question.

*Lord Chief Justice Eyre.* The object of the examination is, to fix that Upton had, for some reasons, which they mean to shew, conceived malice against some of those persons.

*Mr. Law.* I submit they are to get at that object by regular means.

*Lord Chief Justice Eyre.* The means they propose is, to shew that some of these people made some charges against Upton, in

consequence of which the former witness said Upton was disgraced.

*Mr. Law.* I do not object to any thing that is asked respecting Le Maitre, or any body by name, but the question is put in general.

*Lord Chief Justice Eyre.* In general, unless it can be followed by something personal to some one of these people, it amounts to nothing; but the examination has already gone to Le Maitre being one of the persons.

*Mr. Gurney.* I assure your Lordship I abstained from mentioning the names of any one of the prisoners, that it might not be said I put the words in his mouth; but as that gives rise to an objection, I will put my questions more directly.—Do you remember whether, pending that examination into Upton's character, you heard Higgins say any thing in the Society respecting Upton's character?

*A.* Upton was going to save the Society the trouble of expelling him—he was going to take himself away; with that Higgins said, there he hops off: he affronted Upton directly, because it was casting a reflection upon his lameness.

*Q.* Were there, or were there not, expressions of violent animosity passing between Le Maitre, Higgins, Smith, and Upton, in the Society?

*A.* There was some animosity between them, but I did not particularly notice what it arose from, nor how it ended.

*Q.* In point of fact, were Le Maitre, Smith, and Higgins, pursuing any enquiry into the character of Upton?

*A.* Not as I know of.

*Q.* At any time after you had delivered this model to Upton, did he call upon you at your house, after Le Maitre, Higgins, and Smith were apprehended?

*A.* After Upton was apprehended himself, on the Sunday, he called upon me.

*Q.* How long before that had he himself been taken up?

*A.* Only on the Saturday night, according to his own account.

*Q.* What did Upton then say to you respecting Le Maitre?

*Mr.*

*Mr. Attorney General.* I would just intimate to Mr. Gurney, that I have not offered any evidence of acts or declarations of Upton, unless in the presence of the prisoner.

*Mr. Gurney.* Your Lordship has already observed the object of my cross-examination is, to prove the animosity in Upton's mind respecting some of the persons in this indictment, I am going to ask a question to point out that animosity, by shewing something Upton said concerning one of those persons.

*Lord Chief Justice Eyre.* The difficulty of the case is, that at present there is nothing, properly speaking, from Upton in evidence, and therefore your shewing that Upton had animosity against any of these prisoners, is rather going before the point; it will be better for you to examine to that in case they can establish any declaration of Upton's which will be evidence against your client, then it will be proper for you to shew that Upton had malice against your client.

*Mr. Gurney.* If your Lordship will direct the witness to retire for a minute, I will state the object of my question more particularly.

*Mr. Adam.* I submit to your Lordship that the line of examination Mr. Gurney is now following up is admissible in the present stage of the cause. Your Lordship will observe that this indictment lays, as the Attorney General has stated, a conspiracy to take away the life of the King; that there are counts that contain an allegation of conspiracy; and, as the Attorney General stated, there is likewise part of the indictment which contains no allegation of conspiracy; the prisoner is brought up upon the whole of the indictment, and he has pleaded to the whole of the indictment: what part of the indictment is to be submitted to the consideration of the Jury as proved, and what part of the indictment is to be submitted as not proved, is what it is impossible for me at the present moment to know. All that I know at present is, that the prisoner stands indicted with having conspired with three others, who are known, and with others who are not known to the Grand Jury, for the purpose of taking away the life of the King; and it is particularly alledged in the different overt acts, with regard to the preparation of this instrument, which is supposed to be made for that particular purpose, and with regard



gard to the consultations supposed to have been had among the parties, that this Upton, whom my learned friend has stated to be in the other world, and whom, therefore, he cannot produce as a witness—that Upton is one of the principal, but the material conspirator; and not only so, but that this instrument was delivered to him for the particular purpose stated in the different overt acts: what I wish to call the attention of the Court to is this, Upton then appears upon the face of the charge to be a person whose name, whose character, whose mind, whose demeanour, whose intention, with regard to these parties, is necessarily implicated, and therefore I think it follows, as a necessary consequence, that when a witness is brought by the prosecution from whom the Counsel for the prisoner imagine they can derive intelligence with regard to Upton's animosity, and the nature of his mind, they are entitled to give such colour and such appearance to the character of that person, who evidently is a principal actor according to the evidence before the Court; for your Lordship observes, in every step that has been taken, throughout all the pergrination in the different streets to the different brass founders—that throughout the whole Upton has been the foremost man; and therefore I contend, that, as the whole seems to have issued from Upton, as Upton is named upon the record, your Lordships and the Jury have to try his conduct and his character: but, above all, I contend that that which my learned friend is examining too, namely, the animosity of Upton, is a fit subject for examination; and whatever makes out that animosity, which shews that any of the persons charged with this conspiracy could not conspire with Upton, on account of the animosity in which they lived, is *prima facie* ground for our examination; we do mean, if we are under the necessity of going into our case, to give your Lordship such evidence in chief; but at present, if the Crown bring a witness from whom we imagine we can prove that fact, all we claim of the Court is, to be allowed to do it now.

*Mr. Gurney.* Perhaps it would exclude all objection if I were to state the exact object of the question I was proposing:—it is, to prove an attempt of Upton to suborn Hill to swear, before the  
the

the Privy Council, that Le Maitre was the person who called upon him with Palmer when he received the order for these models.

*Mr. Attorney General.* I rise for the purpose of stating to your Lordship, that I do not feel any anxiety with respect to what the Court may think proper to direct upon this subject. It was in consequence of an intimation given by me, that your Lordship had the trouble of hearing any discussion upon it; because, when Mr. Gurney was putting a question respecting a declaration of Upton's in the absence of the prisoner, I thought it my duty to intimate to him that I had cautiously and studiously abstained from asking any question, with respect to any declaration or act of Upton, where I have not evidence to offer that the prisoner was one of the persons present: I have no objection to its being taken in any way Mr. Gurney chooses to state, that Upton had as much animosity as possible against Higgins, Le Maitre, and others; what I state is this, that the declarations of Upton never can be evidence in a case of this sort, unless we, on the other hand, had given some evidence of the declarations of Upton with respect to the party now at the bar. Mr. Adam, says, that Upton is stated upon this record to have conspired with these persons; that is not the fact: we are to prove the conduct of the prisoner; having done that, it must be not by the declarations of Upton, but by evidence, independent of these declarations, that the purpose and intention of his mind must be proved to be such as is charged upon this record.

*Mr. Law.* There is no one charge of a conspiracy with Upton through the whole of the indictment, nor is his name mentioned as a conspirator; we have not attempted to give any evidence of any acts of Upton but in the presence of Palmer, and a third person, whom we have shewn to be the prisoner: if we had given evidence of declarations of his at a distinct and detached time, it would have opened a door to this evidence.—If it is fit to ask this question, we submit we should be at liberty to go into declarations of the same man Upton.

*Mr. Garrow.* It seems to me, that the very manner in which

it may be insisted that this is a proper examination, goes to demonstrate it cannot be proper in this stage of the cause: I am aware there is a stage of the cause, as has been hinted, when this may by possibility become competent evidence: it is as it is opened, to shew the animosity of Upton; and from whence the learned gentlemen state that they mean to infer, first, that Upton could not by any possibility or probability conspire with those with whom he was in a state of constant animosity, and that probably he was of course not conspiring with them but against them. Now I could understand the application and the importance of this argument, and the examination, if the course the Attorney General had taken had been this, instead of charging and laying before your Lordship the acts of the prisoner now at the bar, and his acts alone, or the acts of others when in his company and presence, the Attorney General had given in evidence either the acts of Upton when alone, and when he might have been actuated by animosity against any of these persons, or declarations of his when he might have been actuated by the same animosity; to repudiate all those acts of Upton, to get rid of the impression of all these assertions and declarations of Upton, so circumstanced, I could easily imagine the extreme importance of shewing that Upton had declared he had set about doing this with a view to injure others, but it seems to me that that can by no means be evidence at present.

*Mr. Adam.* Your Lordship will favour me with a few words in reply. Your Lordship will observe what the nature of the question is that is proposed to be put, for it is only by referring to the particular question that your Lordship can judge of the propriety or impropriety of putting it; the question my learned friend proposes to put is this, whether in point of fact Upton did, upon a certain day, and at a certain time, after the discovery of this supposed conspiracy—whether he did or did not endeavour to get the witness at the bar to make a false accusation against Le Maitre, one of the persons accused of this conspiracy. Now your Lordship will observe, that that is a question which does not go to Upton's general declarations—does not go to his general demeanour—does not even go to establish an universal prevailing



prevailing animosity in the mind of Upton, but it goes to establish this clear and distinct point, that there existed in the mind of Upton either such an animosity, or such a desire of self-preservation, that he was determined to get a person to lay the whole blame upon, in order that he might either escape harmless, or possibly that he might reek his vengeance upon the person who had offended him, against whom he had an animosity: and I contend that, as this is an indictment for a conspiracy to take away the life of the King, and as in that Upton is mentioned by name as one of the persons employed to make this particular instrument, and as he is brought forward as a particular character in this transaction, my friend is entitled to defend the prisoner by an examination into the attempts of Upton to suborn this man to perjury against one of the persons indicted for this conspiracy.

*Lord Chief Justice Eyre.* I doubt whether the fact, if distinctly proved, that Upton had done any thing that marked animosity, or that he had made such a declaration as this can, in any stage of the cause, when one comes to consider it, be admitted; I will not pronounce a positive opinion upon that, because I do not know exactly what will be the course of the evidence, or what ultimately we may think fit to receive, which may let in these declarations. At present it is not receivable, because they are declarations not upon oath—declarations not upon oath of a man dead, not under those circumstances which place it upon the footing of an oath; and therefore whatever Upton may have said is not in its own nature evidence, and consequently cannot be received, unless in one particular case, and that is where it is *argumentum ad hominem*, by way of taking off the credit of any thing the witness had said at another time upon his oath, there it may be gone into, though not upon oath; for if a man is upon oath in one story, and makes a declaration before or after of a different kind, this will take off from the credit of that testimony; otherwise, in the nature of the thing, Upton's declaration is no evidence at all.

*Mr. Garrow.* I now propose to call John Le Bretton.

*Mr.*

*Mr. Adam.* I should be obliged to my friend to state to what points he proposes to examine this witness.

*Mr. Garrow.* I call this witness to two facts, both of which, as it appears to us, are of considerable importance; the first is to the time and manner of the flight of the prisoner, after this accusation was made known against Upton; the next is, to his distinct declarations of the share of the guilt he had in this transaction.

*Mr. Adam.* My friend has stated that the principal point to which he means to call this witness, is to the declarations of the prisoner with respect to his participation in the guilt of this transaction. If my learned friend has any particular fact, that is a different question, and I have no objections at all to his calling Le Bretton to prove that fact; but if he means, after he has proved that particular fact, to go on to examine Le Bretton to declarations of the prisoner, I then have to submit to your Lordship, with great humility, but I think with great confidence, that your Lordship, when you come to consider the situation of this prosecution, will be of opinion, that there is no ground whatever for admitting such evidence of declaration.—First of all permit me to state to the Court how I understand the facts in this case to stand; secondly, permit me to state to the Court——

*Mr. Garrow.* I was going to submit to my friend's judgment, whether it would not be more proper to wait till I had exhausted that which my friend feels no objection to; because it is not impossible that in the first part of my examination of this witness I may remove a part of my friend's objection.—I mean to shew the distinct fact of his flight.

*Lord Chief Justice Eyre.* But you must first shew the *corpus delicti*. Does this man fly because he and two other persons went into a brass founder's shop, or a turner's shop, and ordered instruments of a particular description—what then? If there was an examination before the Privy Council—what then? What all this means at present I know nothing of, nor can the Jury know any thing of; you must first of all shew that in somebody this was an offence, and you may, for aught I know, shew

shew it by the very medium of the evidence which you propose to call, but then you must begin at the other end of it; there is a possibility that you might give a sense and a meaning to this obscure and unintelligible evidence which we have had already, that may connect and apply it to the particular charge, but at present I should say, we have heard a great deal about a turner's shop, and a brass founder's shop, and it is all nothing.

*Mr. Garrow.* Your Lordship must be aware that the Attorney General would not have left this case as it is brought now.

*Lord Chief Justice Eyre.* Certainly not.

*Mr. Garrow.* We are now going to give those facts the solution which the Court is asking for.

*Mr. Adam.* The only misfortune I labour under is, that the train of my thoughts has suffered some degree of interruption from my learned friend; not, I am sure, with any intention of that sort, because I always experience kindness and civility from him. I will endeavour to recover the train in which I was proceeding as well as I can.

*Lord Chief Justice Eyre.* What are we about! Mr. Adam do you mean to say that the prisoner's confession of his guilt, if any such thing happened, is not to be given in evidence against him, out of his own mouth?

*Mr. Justice Grose.* What he has said perhaps is respecting the purpose for which these things were ordered.

*Mr. Adam.* Will your Lordship permit me to state the grounds upon which I mean to address myself to your Lordship:—I was endeavouring to draw your Lordship's attention to the nature of the facts, and to the manner in which these facts were proved, and then to ask your Lordship whether there was, according to the proof that now lies before the Court, any evidence whatever, in a prosecution for a crime of this sort, that could entitle my friends to give in evidence these declarations, and these confessions; and I found my observation in the nature of this prosecution, and the law of High Treason. My friend, the Attorney General, has stated, with great correctness, that there must be an overt act laid in the indictment; that that overt



act must be proved not by one witness but by two, unless there are two overt acts of the same kind, and then one may be proved by one, and another by another witness. What is the nature of the evidence already given?—Your Lordship has had given in evidence as I stated it before, not with a view of stating it in any way but in a way perfectly grave—a pergrination of three persons from one brass founder's shop to another, and then to a turner's shop; your Lordship has it in evidence, that where any thing was made, the prisoner had no earthly connection with the order.

*Mr. Garrow.* He expressly assisted in directing the model.

*Mr. Adam.* The first witness called was Dowding; that witness did say he believed they all assented, but that Upton alone spoke: at that place nothing was done of any sort. They then went to a another brass founder's, where nothing was done. They then went to a third, where nothing was done. Then, afterwards, they came to the turner's, where there were directions given to make a particular thing, in a particular form, in wood.—Now, what I contend before your Lordship is this, that to that fact there is but one witness—

*Lord Chief Justice Eyre.* To what fact?

*Mr. Adam.* To the fact of making that model which lies upon the table, and the only witness to that fact is the last witness who was examined; because your Lordship will observe, that whatever opinion your Lordship may have of Mr. Palmer's evidence, he has not spoken positively to any one part of the transaction; and it is perfectly certain, that whatever passed when Mr. Palmer was there, was never carried into execution at all; and, therefore, as far as Mr. Palmer's evidence goes, he does not advance one iota beyond the position in which the evidence stands with regard to the brass founders, namely, an inchoate direction, but which inchoate direction is not even proved specifically to be given by the prisoner, and certainly there is nothing proved to have been executed in consequence of that inchoate direction. Now what is the overt act, if there is any?—it is singly the making that model: then the making that model, if it is an overt act sufficient to entitle your Lordship to admit

admit the evidence of declaration and of confession, upon the part of the prisoner, is an overt act proved merely by one witness; therefore, I contend upon that ground, according to the form of proceeding in High Treason, that it is impossible for them, without having established that overt act clearly and manifestly, by the evidence of two witnesses, to found any thing that can advance one iota in proof of the guilt of the prisoner; and I state that confidently upon this ground, because if it were in your Lordship's breast to admit the overt act to be proved by a single witness, and afterwards to admit the declarations of the prisoner, to give colour to the use of that instrument; you, in point of fact, send to the Jury a question to try, with respect to Treason, where the foundation, that is to say, that which establishes the *corpus delicti*, is established by one witness only, and not by two, as the law requires.—I contend, therefore, upon that ground, that if your Lordship is of opinion with me, that I have stated that evidence correctly, that the only overt act, if it be an overt act, is the making that model, that that overt act is proved only by one witness; and consequently, according to the rules of proceeding in High Treason, the Court have it not in their power, and the Court ought not—

*Lord Chief Justice Eyre.* You are right, what they ought not, they have it not in their power to do.

*Mr. Adam.* Hitherto I have argued upon the idea, that there has been colour sufficient given to the nature of that model, the only overt act proved, the only thing proved to be done, for that is the meaning of an overt act, that tends to infer an attempt to take away the life of the King; your Lordship will consider whether any colour is given to it or not, and then your Lordship will consider this, whether in point of fact if your Lordship thinks there is no particular colour or completion given to this, that takes it out of the situation of a common instrument, for a mere matter of mechanical curiosity. You will admit confessional evidence in order to give that colour and appearance to it; I contend, that that which now lies before the Court, according to the evidence which has been given about it, stands in a situation in its nature perfectly

indifferent, it may have been, for ought I know, meant for a very bad purpose, it may have been meant for a very good purpose, it may have been meant for a purpose perfectly indifferent, most undoubtedly I am entitled to put all these suppositions.—Now, I ask in a criminal case of this sort, with evidence in the nature of confessional evidence, about which, I am sure, I will not trouble your Lordship at any length in the present stage of this business, because your Lordship is better aware of the nature of that evidence than any thing, I can say, can make you aware of it—I say, whether your Lordship thinks, in a criminal proceeding of this sort, where the thing done is proved only as I have stated it, where it is not proved to be done with any particular colour, whether your Lordship is not bound to suppose, until colour is given to it, by some such evidence as tends to prove an overt act, out of the mouth of witnesses that have received it, or supposed to receive it from the mouth of the prisoner, whether your Lordship thinks it right to admit it.

The nature of confessional evidence is this, that undoubtedly it is good or bad, according to the situation and circumstances under which it is given; and if your Lordship permits confessional evidence to be given, does it not amount to this, that your Lordship is allowing the words and declarations of a prisoner, not to a particular fact, but to the intent—if the words and declaration of the prisoner are to be proved upon this occasion, they do not go to prove an identical fact, but they go to prove a particular intent, or a particular disposition of the mind.—Now to apply that again to the situation of this case, to the colour that is given to the use to which that instrument was meant to apply, I must then ask humbly, but most firmly, whether your Lordship thinks, that in this stage of the cause, without going further, it is possible for my friends to give the confessional evidence of the declarations of the prisoner in this case;—above all, I submit that this instrument produced, is the only overt act proved, it is proved only by one witness, and consequently that they do not stand in a situation to show the mind of the prisoner, till they have established most clearly and indisputably this overt act, either by two witnesses, or till they shall have



have given such colour and complexion to it, as to entitle your Lordship to think evidence of confession admissible, as confirmatory and corroboratory—Your Lordship knows the doctrine of evidence of confession, there was a time when it was merely treated as corroborative evidence, though of late it has been admitted.

*Lord Chief Justice Eyre.* Whether there is any rule of law, which requires that there should be a certain quantity of colour of charge proved in evidence before the Court can receive the confession of the prisoner?

*Mr. Gurney.* My Lord, I am about to cite an authority which I conceive will furnish an answer to your Lordship's question; but I will first beg to state what evidence the Crown has offered in support of this indictment. The Attorney General has not yet stated the overt act, to which he intends to apply his evidence; but, I suppose, the overt act intended to be supported by it is the second, in which it is stated, that the prisoner, and others, did employ and engage John Hill, to make two pieces of wood, to be used as models for the making and forming certain parts of an instrument, to be used for the traitorous purpose charged in the indictment.

Now, of any concern which the prisoner may be said to have had in that direction, I submit to your Lordship that we have the testimony but of one witness; the identity of Crossfield, even as being present when these directions were given, has been spoken to only by Palmer—Hill has not spoken to the identity of Crossfield, or any other person whatever, but Upton, and Palmer. The authority I allude to is this, in Mr. Justice Foster's discourse upon the subject of High Treason, page 241, in the case of Francis Willis—"The Counsel for the Crown  
" called a witness to prove what the prisoner had said to him  
" touching the share he had in the Treason, he then stood  
" charged with.—The prisoner's Counsel objected to this sort  
" of evidence, and insisted, that by this act no confession, ex-  
" cept it be made in open Court, shall be admitted in evidence;  
" but the Judges present were very clear that such confession is  
" evidence admissible, proper to be left to a Jury, and will go

“ in corroboration of other evidence to the overt acts, though if  
 “ might be still a disputable point, whether a confession out  
 “ of Court, proved by two witnesses, is of itself sufficient to  
 “ convict.—Upon this last point none of them, except Chief  
 “ Baron Ward, delivered any direct opinion, his words are  
 “ A confession shall not supply the want of a witness, there  
 “ shall be two witnesses to the Treason notwithstanding; but  
 “ to say it shall not be given in evidence there is no ground  
 “ for it. The Attorney General admitted, that two witnesses  
 “ are necessary besides the confession—the Solicitor is more ex-  
 “ plicit, and saith, he (the prisoner) shall not be convicted on  
 “ a trial without two lawful witnesses, that is the thing pro-  
 “ vided for. It was to exclude a precedent that had been settled  
 “ in Tong’s case (the case already cited from Kelyng and  
 “ Hale) but it was not designed to exclude all confessions.  
 “ That was evidence at law, and always must be so. The de-  
 “ sign of the act was to exclude confessions from having the  
 “ force of a conviction unless it were in a Court of Record;  
 “ and to prevent a confession proved by two witnesses from  
 “ being a sufficient ground for a conviction.”

I submit that this is a direct and positive authority, that there  
 must be two witnesses to Treason, previous to the production of  
 any corroborative evidence.

*Lord Chief Justice Eyre.* To put an end to this objection, it  
 will be sufficient to observe, that even upon the reasoning of  
 the Counsel for the prisoner, this evidence ought to be admitted,  
 for here are two witnesses, and more than two to the very overt  
 act that is now insisted upon, in the way in which the prisoner’s  
 own Counsel put it; for unquestionably it being proved that  
 these three persons were all together at Hill’s, and a model hav-  
 ing been there made, and approved of by one, at least, and they  
 all present, it is a question for the Jury, whether those who  
 were present, and who did not express particular marks of ap-  
 probation, did or not concur in it; and if they did concur in it,  
 there are three witnesses to the overt act; but if it were not so  
 it may be a good objection to make, in a future stage of the  
 cause, that there is but one witness to any one overt act of  
 High

High Treason, and that this confessional evidence, upon your rule, will not supply the want of another witness; that may possibly be, but the use of the confessional evidence is at present to make the first part of the evidence intelligible, which it is not, nor do I know it ever will be; but it may, perhaps, appear from these declarations of the prisoner, whether the prisoner's evidence can be rendered intelligible or not, out of the mouth of the prisoner—the authority cited shews, that the prisoner's confession is to be received in explanation, and corroboration of the evidence offered, and it may be offered upon the ground of there being already two witnesses to the overt act insisted upon; but I am of opinion, that it might be offered if but one witness at present had appeared, because another witness, after they have made this evidence intelligible, may come and give other evidence of another branch of the overt act; there is no rule of law which says, that you shall establish the overt act by the evidence of two witnesses first, before you shall hear any confessional evidence, and that is the only question in the cause.

*John Le Bretton, (sworn.)*

Examined by *Mr. Garrow.*

Q. You sailed from Falmouth, I understand, on board the Pomona?

A. Yes.

Q. What were you?

A. Boat-steerer.

Q. What was the Pomona?

A. A South Sea whaler.

Q. You sailed from Falmouth, on the 13th of February, 1795?

A. We did.

Q. Where were you bound to?

A. The Southern Fishery, round Cape Horn.

Q. Do you know the prisoner, Crossfield?

A. I do.

Q. How long before you sailed had you seen him?



*A.* He came on board our ship about a week before we sailed from Portsmouth.

*Q.* Can you tell us at what time he did sail from Portsmouth?

*A.* On the 29th or 30th of January, I cannot say which.

*Q.* In what character did he come on board?

*A.* As surgeon.

*Q.* By what name did he pass, from the time he came on board at Portsmouth till you sailed?

*A.* By the name of "the Doctor," as is most commonly used on board a ship.

*Q.* Did you understand that to be a description of his profession as doctor?

*A.* Yes.

*Q.* Did you know his name at that time?

*A.* I did not.

*Lord Chief Justice Eyre.* Do you receive men in this situation without having their name taken down?

*A.* The Captain might have his name taken down, but I did not know his name.

*Mr. Garrow.* You sailed on the 13th?

*A.* Yes.

*Q.* On the 15th you were taken by a French corvette called the *La Vengeance*?

*A.* Yes.

*Q.* And were carried into Brest?

*A.* Yes.

*Q.* You arrived there on the 23d?

*A.* We did, to the best of my knowledge.

*Q.* Until after you were captured by the French corvette, had you ever heard, from the prisoner, what his name was, or heard him called by any description but "the Doctor?"

*A.* Not until we arrived at Brest.

*Q.* What name did he then assume?

*A.* He wrote his own name in the list that was to be sent on shore, "Robert Thomas Crossfield."

*Q.* Were you shifted before you went into Brest?

*A.* Part of us were taken into the Frenchman,

Q. Did the prisoner or you go in the first number that went out of the English ship into the French ship?

A. The prisoner went in the first number.

Q. Do you recollect any expression of the prisoner, when he went over the ship's side?

A. Yes; as he was going over the side, he wished me and the chief-mate good by, saying, "he was happy he was going to France, he would sooner go there than to England."

Q. When you arrived at Brest, did you find the prisoner there?

A. Yes; on board the same corvette that had taken us.

Q. After you had gone with your ship into Brest, were you put on board the same ship with him?

A. The Pomona was turned adrift, and we were taken into the same corvette as they were in.

Q. By what name did he pass in France?

A. His own name in the muster list.

Q. Were you mustered frequently?

A. Yes.

Q. What was the conduct of the prisoner on board the Pomona, before he was captured?

Lord Chief Justice Eyre. If you mean to apply it to this particular subject very well; but as to any other misconduct of any other kind——

Mr. Garrow. I mean to prove what was his conduct before he was taken, and then to contrast it with his conduct on this particular subject.

Lord Chief Justice Eyre. But, I think, there ought to be nothing given in evidence against the prisoner, that may operate to his disadvantage, until you have fixed something upon him, to which that has a relation—till then it is all prejudice,

Mr. Garrow. Then I must transpose the evidence.—After you had arrived at Brest, did you hear the prisoner make use of any expressions, with respect to his Majesty the King of England; or as to any share he had had in any matter which related to his Majesty?

A. Yes, I did.

Q. Be so good as state very deliberately what they were?

A. I heard him say, he was one of those who invented the air-gun, to assignate his Majesty—to shoot his Majesty.

Q. Did you put any question in consequence of his saying that?

A. Yes, I asked him what it was like; he told me, the arrow was to go through a kind of tube by the force of inflammable air.

Q. Did he describe the arrow?

A. Yes; he described it like one of our harpoons, which we kill whales with.

Q. The harpoon is a barbed instrument?

A. Yes.

Q. Did he explain the properties of the barbs of the arrow, that was to be used for this purpose?

A. I do not rightly recollect any further than that.

Q. State any other expressions you heard from him relative to the same subject, or relative to the King of England, during his imprisonment there?

A. I do not rightly recollect.

Q. Did he use those expressions, you have mentioned, once, or more than once?

A. I heard him talk of the gun several times.

Q. This was a conversation with yourself?

A. Chiefly with myself.

Q. Do you recollect any songs that he sung?

Mr. Adam. Does your Lordship think that is evidence?

Mr. Garrow. I mean to state that they were seditious.

Lord Chief Justice Eyre. I think you had better forbear that examination.

Mr. Garrow. You told us you found him at Brest, by the name of Crossfield—How long did you continue in prison at Brest, the prisoner passing by the name of Crossfield?

A. Till we came away.

Q. In what manner were you to be brought from Brest to this Country?

A. By a cartel which came from the West Indies.

Q. When



Q. When the cartel was ready, and you were about to be transferred into that, what name did the prisoner assume?

A. The name of "H. Wilson."

Q. Who made out the muster list for the purpose of transferring you from the French ship into the other?

A. He was one himself.

Q. Had he acted at all as muster master?

A. Not at all, any Englishman used to write the names—he stood at the gang-way and put the peoples names down, and he put down his own name "H. Wilson," the first or second name.

Q. Did you hear the persons called over according to the list?

A. We had not the muster list called over; I saw that wrote in it.

Q. Did he embark in the cartel by the name of Wilson?

A. He did.

Q. The ship out of which Crossfield was taken was the Pomona?

A. It was.

Q. Was he described in the list as H. Wilson of the Pomona or as of any other ship?

A. As of—"the Hope."

Mr. Adam. Your Lordship observes the witness is now giving parol testimony of a writing?

Lord Chief Justice Eyre. This paper I apprehend ought to be in some public office?

Mr. Attorney General. It is left in France.

Mr. Adam. Do you know what became of that muster list?

A. I do not; I believe it goes to the representative of Brest.

Mr. Garrow. Was any profession described?

A. It was "H. Wilson, of the Hope, a passenger taken by the "same vessel."

Q. Did you hear any other disrespectful or seditious expressions from the prisoner, respecting his Majesty, that you recollect, while you were at Brest?

A. I do not recollect any others.

Lord Chief Justice Eyre. The whole is, he absconded; and when he was to return to England, he assumed a feigned name.

I do

I do not think his not being a loyal subject is evidence against him upon this case.

*John Le Bretton,*

Cross-examined by *Mr. Adam.*

Q. Do you know any thing of your own knowledge with respect to the manner in which this muster list is disposed of?

A. I cannot tell.

Q. For any thing you know, this muster list is sent over to the Admiralty of England?

A. It may be for what I know.

Q. Are you sure you read this muster list with attention, at the time you have been speaking to?

A. I am sure that I both saw and read it over.

Q. And you can charge your memory correctly at this distance of time with what you have stated?

A. Yes.

Q. What was your situation on board the *Pomona*?

A. Boat-steerer.

Q. What was the number of the *Pomona's* crew?

A. Twenty-three I think, the Captain included?

Q. What was the Captain's name?

A. Charles Clarke.

Q. Did he continue a prisoner in France with you all the time?

A. He did.

Q. Did he come back in the same cartel ship with you to England?

A. He did.

Q. Have you seen him frequently since you came back to England?

A. I did a good while since.

Q. How long since?

A. Never since last Christmas.

Q. Were you examined before the Privy Council upon this business?

A. I was.

Q. Was Captain Clarke examined before the Privy Council?

A. I

A. I believe he was not.

Q. Did he attend at the time you attended?

A. Not at the Privy Council he did not.

Q. Have you seen him since your examination before the Privy Council?

A. Yes.

Q. Where?

A. In London.

Q. In what particular place?

A. At the Solicitor's—Mr. White's.

Q. Have you ever seen him in any other place?

A. Yes.

Q. Where?

A. On board his ship.

Q. Have you never seen him at any house on the banks of the river Thames?

A. I have at his lodgings in Wapping.

Q. Where were his lodgings in Wapping?

A. By Gun-dock.

Q. Who is the landlady of the lodgings at Wapping?

A. I do not rightly recollect the name.

Q. Should you recollect the name if it were mentioned to you?

A. I should.

Q. It is not a very uncommon name you know?

A. I do not know for that.

Q. Was the name White?

A. No.

Q. Thompson?

A. No.

Q. Was it Williamson?

A. No.

Q. Was it Smith?

A. No, it was not.

Q. His landlady's name then is not Smith?

A. Not at the last time he came to London.

Q. But



Q. But since your return from captivity, have you seen him at Mrs. Smith's at Wapping?

A. Yes; I was there once or twice with him, but he did not lodge there.

Q. Do you know Mrs. Smith of Wapping?

A. No farther than just by calling there with him.

Q. When was it you saw him two or three times at Mrs. Smith's?

A. At the time he was fitting his ship out, after his return from France.

Q. Had you any conversation with him at that time upon this subject?

A. I cannot rightly say that I had.

Q. Then if any body were to come, and say that you had conversation with him upon this subject at Mrs. Smith's at Wapping, since your return from France, they must of course not be speaking truth?

A. No; I do not know that they could.

Q. Then for any thing that you recollect, you may have had conversation with him at Mrs. Smith's at Wapping?

A. I might have talked to him.

Q. I am not asking you about general conversation; but whether you talked about Mr. Crossfield the prisoner?

A. I do not recollect.

Q. Your recollection is very accurate to the words Mr. Crossfield spoke, and to words you read in a paper, and both those things happened a great while before this meeting at Mrs. Smith's at Wapping. I ask you upon your oath, do you not recollect any conversation you had with Captain Clarke at Mrs. Smith's at Wapping, since you came back from France, upon the subject of Mr. Crossfield and upon this accusation?

A. I do not.

Q. Will you positively take upon yourself to swear you never had any?

A. No further than I told him I had been examined before the Privy Council.

Q. Then

Q. Then now you recollect that you had been examined before the Privy Council, and that you told him so?

A. Yes.

Q. In consequence of your telling him that you had been examined at the Privy Council, did nothing further pass relative to Mr. Crossfield?

A. No, it did not.

Q. Did you not ask him whether he had not over heard Mr. Crossfield say such and such words upon the subject?

A. No, I did not.

Q. I put it to you again, and recollect that you are upon your oath. You say you do not recollect having had any conversation with Captain Clarke about what Captain Clarke must have over heard pass between you and Mr. Crossfield, upon the subject of this accusation?

A. No, I did not.

Q. Neither at Mrs. Smith's nor any where else, since your return from France, nor since your examination at the Privy Council?

A. I did not; nor Captain Clarke never was so inquisitive as to ask me.

Q. Nor were you so communicative as to tell him?

A. No.

Q. How often might you see Captain Clarke at Mrs. Smith's?

A. I do not know that I called there with him above two or three times.

Q. Is he your Captain now?

A. Yes.

Q. Where is he now?

A. He may be on the coast of Africa for aught I know.

Q. How long is it since he left England?

A. At Christmas last.

Q. When did you return from France?

A. I believe we landed the first or second of September, I cannot say for a day or two.

Q. I think you told us Mr. Crossfield came on board the ship at Portsmouth?

A. I

A. I did.

Q. And that you sailed upon the 13th from Falmouth?

A. Yes; and were taken upon the 15th.

Q. What day did you sail from Portsmouth?

A. On the 29th or 30th, I cannot say which.

Q. How long had Crofsfield been at Portsmouth before you failed?

A. He came on board us about a week before we failed.

Q. And you knew him by the name of "the Doctor,"—for aught you know your Captain might have known his real name?

A. He might.

Q. During the time that the ship lay at Portsmouth, before she failed from St. Helens, were you frequently in company with Mr. Crofsfield?

A. At meal times.

Q. Did you ever come on shore with him?

A. He was on shore two different evenings with me, at Portsmouth.

Q. Who came on shore besides him and you?

A. The boat's crew.

Q. How many might that boat's crew consist of?

A. Five men.

Q. Did you come on shore together?

A. Yes.

Q. Did you go to places of public resort?

A. No.

Q. Mr. Crofsfield went publicly about the streets with you?

A. Yes.

Q. This was in the month of January?

A. Yes.

Q. You were driven into Falmouth?

A. We went into Falmouth.

Q. What was the ship loaded with?

A. Casks of water, and provisions for the voyage.

Q. Do you mean to say upon your oath, that casks of water and provisions for the voyage, were all the Captain and the ship's



ship's crew had laid in, for the purpose of trafficking to the South Seas?

A. No.

Q. What was there besides?

A. The Captain's private trade.

Q. What did that consist of?

A. I cannot say.

Q. Had not you private trade of your own?

A. Nothing but a couple of dozen pair of stockings.

Q. Did not the private trade of the Captain and the crew consist of jewellery, trinkets, watches, and other articles?

A. He had something of that kind.

Q. And to a considerable value?

A. Yes, I believe he had.

Q. You put into Falmouth by stress of weather?

A. By the wind getting on to the westward, and we were afraid to stay at sea, on account of the French.

Q. What day did you put into Falmouth?

A. I believe it was the second of February, I cannot say rightly for the day, having lost my journal.

Q. You sailed the 13th—and remained ten or eleven days at Falmouth?

A. Yes.

Q. Did you remain some time in the harbour?

A. We went to the Roads.

Q. Were you frequently on shore?

A. Yes.

Q. Was Mr. Crossfield frequently on shore at Falmouth?

A. He was never on shore more than once, if he was that.

Q. That you are positive to?

A. Yes.

Q. Were you on shore with him at that time?

A. I cannot say that I was.

Q. You cannot tell how long he remained on shore?

A. I do not know that he was on shore at all, if he was on shore, it was not more than once.

Q. If

Q. If you do not know that he was on shore, you cannot take upon yourself to say any thing about it.

A. No, I cannot tell whether he was on shore or not, because I do not know any thing about it.

Q. You sailed upon the 13th, and were captured upon the 15th?

A. Yes.

Q. As soon as you were captured, were you all put on board the corvette?

A. No.

Q. How long was it before your being put on board the French ship, after your capture, and being carried into Brest?

A. From the 15th to the 23d.

Q. During that time, what sort of weather had you?

A. Pretty moderate for the time of year.

Q. How many English prisoners were there of you altogether on board that ship?

A. There were none but our ship's crew at first.

Q. Do you recollect any scheme upon the part of your ship's crew to take possession of the French ship?

A. Yes, I do.

Q. Who was concerned in that scheme?

A. We were all concerned in it, as far as I know.

Q. Captain Clarke was concerned?

A. He was.

Q. You were concerned?

A. Yes.

Q. Mr. Crofsfield was concerned?

A. I believe he was.

Q. And that was between the period of your capture and the period of your getting into Brest?

A. It was about three days after our capture.

Q. How did that scheme fail?

A. By one or two being disheartened, and the prisoners we took from other ships being outlandish men, and not agreeing to it.

Q. Will you swear that Mr. Crofsfield was not one of the

foremost in that attempt—was he not ready to enter sword-in-hand into the cabin, to make that rescue?

A. I was not in the cabin, and I cannot pretend to say what I did not see.

Q. Where were you first taken to, when you went into Brest harbour?

A. Into the roads.

Q. Did you go along-side any other English ship?

A. No.

Q. Had you any intercourse with the English prisoners of other ships at that time?

A. Not until we got on board the prison-ship.

Q. You were removed from the ship in which you were taken into a prison-ship?

A. We were.

Q. Did you meet any English prisoners in that other prison-ship?

A. Yes, numbers.

Q. Do you recollect the names of any of them?

A. No, not rightly.

Q. Was not Mr. Crossfield carried on board the prison-ship with you?

A. He was.

Q. What was the name of that prison-ship?

A. The Elizabeth.

Q. What ship lay along-side the Elizabeth, the nearest ship?

A. I cannot rightly say what was the nearest ship to us.

Q. Do you remember the L'Achille?

A. Yes.

Q. Was not she close to you?

A. Pretty near hand.

Q. Was not the Normandy close to you?

A. She was pretty near.

Q. I need not ask you whether Mr. Crossfield speaks French?

A. He does.

Q. Did not he serve in common as an interpreter between



the prisoners that could speak French, and those who could not?

A. Sometimes he did; there were several that could talk French.

Q. Do you know any of the English sailors that were on board the L'Achille or the Normandy?

A. Not the particular ones.

Q. Do you remember any captains?

A. Not to know their names; I should remember them if I saw their persons.

Q. Do you remember Captain Yellowley?

A. Not in particular; there was a Captain Yellowley, who was Captain of the transport we came over in; he was not on board the prison-ship.

Q. Where did you meet him?

A. In Landernau river.

Q. Do you remember Mr. Cleverton?

A. I do.

Q. Where did you know him?

A. He was taken by the same ship, two or three days after we were.

Q. Did he come on board the same prison-ship with you?

A. He did.

Q. Did he stay on board that prison-ship, the Elizabeth, during the whole time Mr. Crofsfield and you were on board her?

A. He did.

Q. Mr. Crofsfield, of course, was acquainted with him?

A. For aught I know he was.

Q. You did not mess with Mr. Crofsfield, at this time, did you?

A. I did not.

Q. Do you know whether Mr. Cleverton messed with him?

A. I believe he did.

Q. Do you know Captain Collins?

A. There was a Captain Collins there.

Q. Was he on board the Elizabeth prison-ship?

A. I

A. I do not know; I remember a person of that name being there.

Q. You were afterwards removed from the Elizabeth prison-ship to another—what ship were you removed to?

A. The ship I went on board of was the Peggy.

Q. What ship lay along-side, next the Peggy.

A. The Active Increase; they were lashed along-side each other; they lay so close that I jumped from one to the other.

Q. And they were both used as prison-ships?

A. They were.

Q. Did Mr. Crossfield go on board the Peggy with you?

A. He was on board the Peggy.

Q. Was Mr. Cleverton on board the Peggy?

A. He was.

Q. Was Captain Yellowley on board the Peggy?

A. I do not know that he was.

Q. Was Captain Collins on board the Peggy?

A. I do not remember any such name on board the Peggy.

Q. Do you remember such a name on board the Active Increase?

A. I do not.

Q. Captain Clarke was on board the Peggy?

A. He was.

Q. Now, from the time you were removed from the Elizabeth prison-ship, in Brest harbour, to the Peggy and Active Increase in Landernau river, till you came back to England, Crossfield, yourself, Clarke, and Cleverton, were all on board the same ship?

A. Not all the time, they were not.

Q. But the greatest part of the time?

A. I cannot say how long.

Q. At what time was any one removed?

A. Mr. Cleverton was sick, and at the hospital, for some time.

Q. I believe, when any prisoners appeared to be sick, or stated themselves to be sick, they were immediately taken from on board the prison-ships to the hospital on shore?

A. They were.

Q. So that if any of the prisoners on board these ships were taken with an accidental sickness, they were removed to the hospital?

A. They were carried to the hospital on shore when they were very bad.

Q. Were they not carried on shore when there was any reason to suspect they had any disease?

A. They let them be pretty bad first, and then they were taken on shore.

Q. After Mr. Cleverton recovered, he came back to the prison-ship?

A. Yes.

Q. And then he remained on board the Peggy till you all embarked on board the cartel for England?

A. Yes.

Q. Who commanded the cartel?

A. Captain Gallowley, or Yellowley, I do not know whether his name is with a Y or a G.

Q. Was Captain Collins on board the cartel?

A. I cannot tell whether he was or not; there was a Captain Collins, who commanded one of the transports there.

Q. Long before the return of the cartel, you knew that the person who was called "The Doctor," was Mr. Crofsfield?

A. Yes.

Q. And so did all the ship's crew?

A. I cannot pretend to say that; I saw his name wrote, and I saw him.

Q. I think you said that he continued a prisoner under the name of Crofsfield till you came away?

A. Till nearly we came away.

Q. Of course he was known as a prisoner by the name of Crofsfield?

A. By the name of "The Doctor," in general.

Q. But any body that chose to be satisfied about his real name, would know his name was Crofsfield?

A. Yes, there was no secret about it.

Q. You



Q. You said the Captain's private trade and your private trade consisted of some cotton stockings?

A. Yes.

Q. Did they take up any considerable room in the ship?

A. I cannot say they did.

Q. They were easily stowed away?

A. There were three or four large trunks.

Q. They could have passed perfectly well for the clothes and wearing apparel of the persons to whom they belonged?

A. I do not know for that, because a person could not wear a considerable number of stockings and all that.

Q. Upon your oath, were not those articles conveyed on board the prison ships, and made the subject of sale, by the different persons who had been taken prisoners?

A. There was a trifle which they had, which they broke open.

Q. There was a trifle taken and sold?

A. The ship's crew got them among them.

Q. Was there any quarrelling and any dispute about them?

A. I do not remember any.

Q. Do you remember Mr. Crofsfield making any observation about it?

A. I do not.

Q. Had you never any words with Mr. Crofsfield upon that subject?

A. I never had any words with Mr. Crofsfield to my knowledge.

Q. You are perfectly sure that there never were any words between you and Mr. Crofsfield upon this subject?

A. I do not know that I ever had a word in anger with him.

Q. Did you ever hear him tell the people that had those stores that he would inform the underwriters that they never had been captured?

A. I never did.

*Thomas Dennis, (sworn.)*

*Examined by Mr. Wood.*

Q. Were you Chief Mate of the Pomona?

A. Yes.

Q. Did you sail in her from Portsmouth?

A. Yes, the latter end of January.

Q. Do you remember the day?

A. No; I believe between the 29th and 31st.

Q. Did the prisoner sail in the ship with you?

A. He did.

Q. In what capacity?

A. As surgeon.

Q. What name was he called by?

A. I did not rightly know his name; he went always by the name of "Doctor."

Q. How soon did you know his name?

A. Not till we got into France.

Q. Was the Pomona captured?

A. Yes, on the 16th of February, by the La Vengeance, a corvette.

Q. Where was she carried into?

A. Into Brest.

Q. Had you ever seen the prisoner before he came on board at Portsmouth?

A. Never.

Q. In the course of your voyage, did you ever hear him say any thing about what would be done if it was known where he was gone?

A. Yes; the night after we sailed from Falmouth, he said—"if Pitt knew where he was, he would send a frigate after him;" moreover—"that Pitt would have been shot, only he crossed some bridge in the room of Westminster bridge;" the bridge I have forgot,

Q. Did you ever hear him say any thing about his Majesty?

A. Yes; I heard him say—"his Majesty was to be assassinated"

nated at the play-house with a dart blown through a tube, and that he knew how the dart was constructed."

Q. Did he tell you how it was constructed?

A. No, I heard nothing further about the dart.

Q. Did he say any thing about the form of it?

A. No, I never heard him mention any thing about the form; I believe he mentioned something about—"its being in the shape of a harpoon;" but I cannot tell particulars.

Q. Did you hear him say any thing more upon that subject?

A. Nothing more about the King.

Q. Did you understand from him what was to be done with this dart?

A. No more than he said—"his Majesty was to be assassinated by it."

Q. Did he say any thing about the construction of the tube?

A. No further than—"that the dart was to be blown through a tube."

Q. After the capture, did you hear him say any thing about his being glad to leave England?

A. When we were first taken, Crossfield took me by the hand, and said—"he wished I might get a ship safe to England, he was glad he was going to France, and was happy he had got out of England."

Q. On your arrival at Brest, was there any muster taken?

A. Yes, the list of prisoners was made out, and sent on shore to the war-office.

Q. Did Crossfield sign his name?

A. Yes; "R. T. Crossfield;" and he said—"he had no occasion to be ashamed," or "to be afraid," I am not sure which, "of his name now."

Q. How long did he go by that name?

A. All the time he was in France.

Q. Did he change it to any other name?

A. Yes; the day the list of prisoners was made out to be sent to England, he changed his name to "H. Wilson."



Q. Did you see the list in which the name of H. Wilson was entered?

A. Yes, I over-hauled it; it mentioned—"his being captured in the Hope Brig," instead of the Pomona.

Q. By what ship was it mentioned he was captured?

A. By the same ship, the La Vengeance.

Q. Was that in his own hand-writing?

A. Yes.

Q. Did you hear the list called over?

A. I did.

Q. Who called it over?

A. The Commissary from Brest.

Q. What name was he called by?

A. H. Wilson.

Q. Did he answer to that name?

A. Yes, and he walked aft directly.

Q. Were you the person that gave information to the magistrate of Crossfield?

A. No; I heard of it upon the road, as I was coming from Cornwall to town, at a place called St. Austle, or at Bodmin—at Bodmin, I believe.

Q. Who did you inform of this?

A. I was subpoena'd before the Privy Council.

Q. But to whom did you give intelligence of what had passed?

A. To nobody; I never mentioned it before.

Q. You did not go before any magistrate?

A. No, I never mentioned his name to any body till I was subpoena'd; I was going to sea the next day.

*Thomas Dennis,*

Cross-examined by *Mr. Gurney.*

Q. You sailed from Falmouth on the 13th, and were taken on the 15th—How many days were you upon your Voyage to Brest, after you were taken?

A. I believe we got into Brest on the 22d or 23d.

Q. Then

Q. Then you were seven or eight days upon your voyage?

A. Yes.

Q. Do you recollect any plan being formed in the course of that voyage, among the English prisoners, to seize the French ship?

A. I do.

Q. Were you concerned in that plan?

A. Yes.

Q. Was Captain Clarke concerned in it?

A. Yes.

Q. And Mr. Crofsfield?

A. Yes, I believe he intended to be one.

Q. In fact, you all meant to rise upon the French, and to seize the ship?

A. Yes.

Q. Were you of that party in which Mr. Crofsfield was to be?

A. The people were to be upon deck, and those in the cabin were to seize the arms in the cabin.

Q. You were put on board the Elizabeth in Brest Harbour?

A. Yes.

Q. Near which there were the L'Achille and the Normandy?

A. Yes.

Q. The Corvette took another vessel after she had taken you, before she got back to Brest?

A. Yes.

Q. What was the name of that other vessel?

A. The Hope Brig.

Q. Who was Captain of her?

A. Mr. Faulkner.

Q. Was Mr. Cleverton on board that vessel?

A. He was?

Q. Was he put on board the Elizabeth with you and Mr. Crofsfield?

A. He was.

Q. How long did he remain on board the Elizabeth?

A. As long as we staid.

Q. Were

Q. Were Captain Yellowley and Captain Collins on board the Elizabeth?

A. No.

Q. They were Captains of cartels?

A. Yes, in Landernau river.

Q. The Active Increase was close to the Peggy?

A. Along-side of her.

Q. Captain Yellowley and Captain Collins were Captains of two cartels near you?

A. Yes.

Q. You had access to these vessels?

A. Sometimes.

Q. Mr. Croisfield, after some time, left the Peggy?

A. Yes.

Q. On board what ship did he go?

A. One of the ships in which Captain Collins, Captain Yellowley, or Captain Alexander were—I cannot tell which.

Q. Who was Captain of the Active Increase?

A. Captain Fearnley: he died.

Q. You were enabled, by the politeness of the French Captain, to save some part of the private trade of the Captain and of yourselves?

A. Yes.

Q. What did that private property consist of?

A. Stockings, chiefly.

Q. Some watches?

A. The Captain saved some watches.

Q. And jewellery—some trinkets?

A. Yes.

Q. Was this property insured?

A. I do not rightly know.

Q. Do not you know that?

A. I had none of my own insured.

Q. Do you not know that Captain Clarke's was insured?

A. I have heard it was.

Q. These articles were afterwards the subject of traffic on board the prison-ship—were they not?



A. Yes.

Q. You recollect some observations being made by Mr. Crossfield, respecting this being a fraud upon the underwriters?

A. Not to my recollection.

Q. Try and rub up your recollection a little?

A. It never concerned me.

Q. I ask you whether Mr. Crossfield did not expressly charge you and Captain Clarke with defrauding the underwriters, by the sale of these articles?

A. Never me; he did not charge me.

Q. Did you never hear him charge Captain Clarke?

A. No.

Q. Had you never any words with him upon the subject?

A. No.

Q. That you are sure of?

A. Yes.

Q. Then if any body should swear that you had, they will swear what is untrue?

A. Yes; if they swear I had any words with the Doctor upon that subject.

Q. Or he any words with you?

A. Or he any words with me.

Q. Was there no quarrel between you and Mr. Crossfield while on board that ship?

A. No, I do not rightly know; I never exchanged fifty words with him to my knowledge, all the time we were in France.

Q. How many did you exchange with him before you went to France, fifty more?

A. I cannot say.

Q. Perhaps you were not in habits of great intimacy?

A. My station was on deck; his station below.

Q. Did any words pass between you, respecting any negligence of your's, by which the ship was taken?

A. Never, to my face; I heard he had said so behind my back. I was informed so, I never heard it from himself.

Q. Did you never talk with him upon that subject?

A. No.

A. No.

Q. You are sure of that?

A. Yes.

Q. Are you quite sure that it was not on account of disputes and quarrels between you, Mr. Crofsfield and Le Bretton, that Mr. Crofsfield was removed on board another ship?

A. No, there was not.

Q. There were no disputes between you, Le Bretton and Mr. Crofsfield?

A. No.

Q. That you are quite certain of?

A. Yes, I am.

Q. You understood that Mr. Crofsfield, behind your back, had blamed you for the capture of the ship?

A. Yes, I heard he had said it was my fault that the ship was taken, my not making sail; but he never mentioned that to my face.

Q. Mr. Crofsfield I believe lived constantly on board the Elizabeth with Mr. Cleverton, Captain Clarke, and those persons?

A. He did.

Q. He messed with them?

A. At the same table.

Q. Was he in considerable intimacy with any of them?

A. Not remarkably, that I took any notice of.

Q. However he did daily and hourly associate with, and mess with them?

A. Yes.

Q. You were miserably off in these prison-ships for want of provisions?

A. No, I cannot say I ever wanted provisions while I was there.

Q. Had you never any bad provision there?

A. Yes.

Q. Bad provision and confinement were not very pleasant to you I suppose?

A. No.

Q. Did you ever take any steps whatever for getting your liberty?

A. No.

A. No.

Q. Did you ever state to the French, either directly or through the medium of Mr. Crossfield, that you were an American?

A. Yes.

Q. Did you forge a certificate of your being an American?

A. I did not forge any.

Q. I do not mean to use an offensive word; you did write a certificate purporting that you were an American?

A. I wrote to the Consul.

Q. Did the Consul give you any assurance that he would endeavour to pass off that certificate for you as an American?

A. Mr. Crossfield told us before we got to France, that he would procure us all our liberty.

Q. Did not he state that he was a naturalized Hollander?

A. Yes, he wrote that.

Q. Do not you recollect that he wrote to Leyden, to ascertain that he had a diploma from that University, and therefore was a naturalized Hollander?

A. I recollect he wrote to some place, but what place I cannot say.

Q. Was Mr. Crossfield a man of the most grave and serious deportment imaginable?

A. No.

Q. I believe he was very much the contrary?

A. He was a man that drank very much.

Q. I mean was he a man of grave deportment, or of a good deal of levity?

A. Very much levity in talking.

Q. Talking and rattling a good deal?

A. Yes.

Q. You hardly knew sometimes whether he was in jest or earnest?

A. Indeed I did not pay much attention to him.

Q. On that very account?

A. No; from his bad principle altogether.

Lord Chief Justice Eyre. If the prisoner had chosen to have staid in France, might he not have staid there?

A. I



*A.* I cannot say.

*Lord Chief Justice Eyre.* Did they oblige the crew to go on board the cartel ships, if they had expressed any inclination to stay?

*A.* I never heard any body say they had an inclination to stay.

*Mr. James Winter, (sworn)*

*Examined by Mr. Fielding.*

*Q.* You were I believe master of a vessel called the *Sufanna*?

*A.* I was the owner of both ship and cargo.

*Q.* On your passage from Newfoundland you were captured?

*A.* Yes; by a French frigate and two sloops of war.

*Q.* Were you carried into Brest by this French frigate?

*A.* I was.

*Q.* You came from Newfoundland?

*A.* Yes; and was bound to Spain or Portugal.

*Q.* Do you recollect the time when you arrived at Brest?

*A.* I was taken on the 6th of December, and arrived at Brest on the 13th I think.

*Q.* What became of you when you were carried to Brest?

*A.* I was on board a prison ship sometime, and afterwards was removed into Brest Castle.

*Q.* During your being at Brest, did you at any time see Crofsfield the prisoner?

*A.* I was carried on the 20th of March up Landernau river, there were three English cartels lashed together, I was put on board one of them.

*Q.* Were you on board any ship where you saw Crofsfield?

*A.* Crofsfield came on board the ship I was in, I think on the 2d or 3d of April, it was the beginning of April.

*Q.* On board what ship did he come to see you?

*A.* The Revolution Brig, Captain Yellowley.

*Q.* Did any thing pass between you at that time?

*A.* Captain Yellowley introduced him to me, as Mr. Crofsfield—he said, “his name was not Crofsfield, but Tom Paine”—and laughed.

*Q.* What did you say to him, upon his saying that?

*A.* I

*A.* I said nothing to him—after he had been at supper he began to sing some very bad seditious songs.

*Q.* Did any thing afterwards pass relative to his Majesty, the King of England?

*A.* Yes.

*Q.* What passed on that subject?

*A.* He said "he shot at his Majesty, but unluckily missed him."

*Q.* Did he say where?

*A.* He said it was "between the Palace and Buckingham-house." I asked him sometime after, when he and I were walking the quarter-deck—where was you when you shot at his Majesty, he hesitated sometime, and then said, between Buckingham-house and the Palace.

*Q.* Did you continue the conversation with him upon this subject; did you ask him any other question?

*A.* No; it was his constant subject every day after dinner, and after supper; I dined and supped with him every day, sometimes on board one ship, sometimes another, for five months together.

*Q.* Then, as you had a great many opportunities of hearing this gentleman's declarations, did you ever hear him say any thing more, relative to his Majesty?

*A.* Yes.

*Q.* In the general, in what way did he speak of him?

*Mr. Adam.* I hope your Lordship does not think that any thing with respect to this man's conversation, that does not go to the point in question, is evidence?

*Mr. Fielding.* Does your Lordship call upon me to sustain the propriety of asking a witness questions of this nature—having established the ground immediately relative to the charge, surely I am at liberty now to prove the deportment of this man, and what he has said, with respect to his Majesty, at any other time, subsequent to that substantive evidence, I have offered already?

*Mr. Adam.* My learned friend has only asserted his right, he has not argued it, and therefore, it would be idle in me to argue it.

*Lord*

*Lord Chief Justice Eyre.* If it is pressed after the fact is established, I cannot say that general conversation, importing his sedition and enmity to the King, is not in corroboration of the fact before stated; it is to be considered what effect even this declaration, now proved, will have; it is a declaration totally different from that which is proved by the former witnesses, and has no relation, indeed, to the particular charges in this indictment.

*Mr. Attorney General,* I certainly shall not press it.

*Mr. Fielding.* Did he say with what weapon he had shot at his Majesty?

*A.* No.

*Q.* Did he give any description?

*A.* He said, he had a thing, which I understood him he had shot at him with, something as large as that candlestick, and as long as the candle and candlestick together, which was like a pop-gun, round and hollow, about a foot and a half long; he said, "he intended to put some poisoned darts in it; that he had shot at a cat and killed her; that the cat expired in a few minutes afterwards in great agonies;" he said, "it would kill any man at thirty yards distance, and nobody could perceive that he had done it;" this he repeated fifty times, while I was in his company.

*Q.* When you were in company with him, were there other people in company with him also?

*A.* Yes, there were nine of us dined together every day.

*Q.* Was this conversation before other people too?

*A.* Yes.

*Q.* And not confined to you?

*A.* No; except at certain times when he and I have been walking the quarter-deck, and we have talked it over together; he shewed me in what manner they were made, with his finger in some wet upon the table; he stroked with his finger as if there were hairs in it; he said, "they opened when it struck, and something flew out and let the poison in."

*Q.* When the arrow penetrated, the poison came out?

*A.* "That as soon as the arrow struck, the poison came out of the dart."

*Q.* Had



Q. Had you any conversation about where he got the poison?

A. He said, "he prescribed it;" but I do not know the place where it was bought; he said, "he was the very person that ordered it to be made up."

Q. What, do you mean the poison?

A. Yes, "the poison to be mixed."

Q. Did he say what sort of poison it was?

A. He said, "he got it at a shop."

Q. Did he say for what purpose he had got this poison?

A. To fire at his Majesty.—He said, "he had fired at his Majesty;" but he never said it was with that that he fired at him; he said, "he fired at him but unluckily missed him;" I heard him say that fifty times; that, "he damn'd unluckily missed him;" sometimes he said, "it was very unlucky."

Q. Was this description likewise given by him to the people who were present, when he dined with you, or was in company with you?

A. There was nobody in the cabin with me when he made that remark; the Captain and some of them were gone on board the French Commodore, and some were on board the other ships; he and I were sitting at the table drinking some grog.

Q. Did you, during those five months, ask him any further explanation of those things or not?

A. No, I never did, I was afraid to do it; I only asked him one question when we were walking the quarter-deck together, where he was when he shot at the King; he said, "he was between Buckingham-house and St. James's;" after he had hesitated some time, he said, "I was between Buckingham-house and St. James's Palace."

Q. Do you remember having any conversation with him in August?

A. Yes.

Q. Did he say any thing about his wishes, relative to the people in London, and his Majesty?

A. He said, "he hoped he should live to see the day when the  
I streets

streets of London should be up to his ancles in the blood of the King and his party."

Q. Was this said in the presence of more persons than yourself?

A. Yes.

Q. Do you recollect the names of any gentlemen who were present when he made this declaration?

A. Yes; I recollect one gentleman said, God forbid, matters may be done more easily.

Q. Who was that?

A. Captain Yellowley.

Q. Do you recollect any other persons, by name, that were present?

A. No, none else.

Q. Did he say any thing about the chemist from whom the poison was purchased?

A. He said, "he went to the chemist's and ordered how the poison should be made up, and it was made up; that he made use of some, and shot at a cat, and the cat expired in a very short time, or in a few minutes afterwards."—I believe I made a mistake in saying it was in August, it was some time in July, I believe, that he made use of that expression about his Majesty.

Q. When this conversation had continued between you of his having shot at his Majesty, did he say any thing of what became of himself, or what he was obliged to do?

A. He said, "he was obliged to make off immediately to Portsmouth, where he went on board a South Sea-man, that in two or three days afterwards they fell in with a French frigate, and luckily were carried into Brest."

Q. Did he say any thing about a pursuit being made after him by a King's Messenger?

A. He said, "there were two King's Messengers after him—that he was pursued by two King's Messengers."

Q. When you first knew him at Brest, by what name did he pass?

A. By

*A.* By the name of Crossfield only. At the time he introduced himself as Tom Paine; he said, he went by the name of Tom Paine on board some other ships.—When he was given in to the list to come home in the cartel, he entered his name as “ Henry Wilson.”

*Q.* You have said there were several people in company with you at different times ?

*A.* Yes.

*Q.* Endeavour to recollect all the conversation that passed when he said he wished to see the streets of London flowing with blood ?

*A.* That was his constant conversation all that night, till Captain Yellowley interrupted him, and said, God forbid, matters may be done more easily.

*Q.* Was there any person else, in your company with Crossfield, that said any thing which drew an answer from Crossfield ?

*A.* No; Captain Collins, another time said, he should be happy if he could have the cutting off of the King, Pitt, and Parliament.

*Q.* Who said so ?

*A.* Captain Collins said, he should be happy to have the cutting off the head of both the King, Pitt, and the Parliament.

*Q.* What did Crossfield say, in answer to that ?

*A.* He said, “ have patience, have patience, I hope to have the cutting off some of them by and by myself.”—Captain Collins said, he wished to have the cutting off both King, Pitt, and Parliament’s head.—Crossfield said, have patience, have patience, I hope to have the cutting off of some of them by and by myself.

*Q.* When did you leave Brest ?

*A.* On the 27th of August.

*Q.* In what cartel did you come ?

*A.* I came along with Captain Yellowley, in the Revolution.

*Q.* Do you know how Crossfield came over ?

*A.* He came in the same ship.

*Q.* How long was he embarked on board that ship before you sailed from Brest ?



*A.* He was not long on board, I was on board the French Commodore with him; he, and Captain Yellowley, went on board the French Commodore half an hour, or an hour before we failed, when Crossfield and Yellowley came out from the cabin, Crossfield said, "every thing now is settled to my own satisfaction:" that was said upon the gang-way of the French Commodore.

*Q.* What became of him after this declaration?

*A.* One of the Captains, that was in the boat, held up his hand to stop him from saying any more.

*Q.* What Captain do you mean?

*A.* One of the masters of the vessel, Captain Wyatt, or Captain Lambton, I cannot say which; he further said, at other times, that "the French had given him great encouragement, that they would provide for him;" he said that fifty times, but he never explained more than that.

*Q.* What became of him afterwards?

*A.* Then he went on board the cartel, and we failed that very day.

*Q.* How long were you upon your passage to England?

*A.* Three days.

*Q.* During your passage, did any thing remarkable take place?

*A.* No, not a word, nor for many days before that, till the time we left the Commodore.

*Q.* How came it that nothing passed between you?

*A.* He was very close, he did not offer to mention a word there; he never said a word, I think, from the 18th or 19th of August, until the very day he left the French Commodore; he never said a word, that ever I heard, he was always very close.

*Q.* When you came to England where did you land?

*A.* At Mevagissy.

*Q.* Did you communicate this to any body?

*A.* I immediately enquired at a public-house at that place for a Justice of the Peace, the landlord told me there was a Justice at two or three miles distant, and he would go with me himself.

*Q.* Did you go to this Justice of the Peace?

A. I went immediately—I was not ashore five minutes before I went to the Justice's, when we came to his house he was not at home; I saw the Justice afterwards, and laid an information against Crofsfield.

Q. What was done upon it?

A. He granted a warrant to have him apprehended; when they came down to apprehend him the next morning, the vessel was gone over to Fowey, he was pursued to Fowey, and was apprehended.

*Mr. James Winter,*

Cross-examined by *Mr. Adam.*

Q. May I ask you what age you are?

A. Fifty-nine years of age.

Q. You belong to Newfoundland?

A. I am resident at that place at present, but I was born in England, my family are at Newfoundland, and I carry on my business there.

Q. And you happened to be captured and taken into Brest as a prisoner?

A. Yes.

Q. At what time were you captured?

A. On the 6th of December, 1794.

Q. You were brought on board this prison ship after having been some time in Brest Castle?

A. Yes; on the 20th of March, I went on board the English prison ship.

Q. You have mentioned the names of two persons on board that prison ship, Captain Collins, and Captain Yellowley?

A. Yes.

Q. Can you recollect the names of any of the persons who used to mess with you at that time?

A. Yes.

Q. Was Captain Clarke one?

A. No.

Q. Which prison ship were you on board?

A. The Berwick; Captain Alexander, Captain Collins, Cap-

tain Yellowley, Captain Lambton, William Byron, and Henry Byron, Richard Taylor, Crossfield, and me.

Q. Where are those gentlemen now?

A. I do not know; Captain Yellowley is in London, I believe.

Q. Where is Captain Byron?

A. I do not know.

Q. Where is the other Mr. Byron?

A. I do not know.

Q. Did they come over in the cartel with you?

A. Yes, all of them.

Q. You do not know where they reside in England?

A. No; I believe in Shields, some of them.

Q. Did anybody ever ask you where they reside in England?

A. No.

Q. Have you never mentioned their names before?

A. Not to any Justice, only to the gentleman at Mevagissy, I mentioned them all to him.

Q. When you mentioned all of those persons to the Justice, at Mevagissy, did you state that they had come home with you in the cartel ship?

A. Yes.

Q. Did you tell him that they were the persons with whom Crossfield and you had been in company?

A. Yes; I did not mention them as if they had been of a party.

Q. I do not want you to accuse those gentlemen, I only want to know whether you told the Justice that all those gentlemen, you have mentioned, were constantly in your, and in Crossfield's society, at this time?

A. Yes; all of them excepting Captain Alexander, and he remained there.

Q. Those Mr. Byrons were very respectable men, were they not?

A. They seemed very well there.

Q. They lived in the mess with you?

A. Yes.

Q. Perhaps



Q. Perhaps you thought nobody so respectable as yourself.—These people all came over with you, and the Magistrate, in Cornwall, to whom you discovered this whole business, knew perfectly well that they had all come with you, and had all been in the society, in which those things you have mentioned had passed?

A. They did not remain in the vessel an hour after.

Q. But they landed at Fowey?

A. Yes.

Q. And they were part of the family that dined with you every day there?

A. Yes.

Q. Do you remember Captain Clarke?

A. I remember there was such a name, but I was not acquainted with him.

Q. Did you never go on board the Peggy?

A. No.

Q. You say, when you were first introduced to Mr. Crossfield, that he called himself Tom Paine; had you lived enough with Mr. Crossfield, at that time, to know his manner of life?

A. No.

Q. Afterwards you came to know pretty well how he lived?

A. When he came to sing those songs I withdrew immediately, and went on board my own ship.

Q. Were you enough acquainted with him to know that he accustomed himself to strong liquors?

A. Yes, when he could get it; but he could not get it there, he would drink it if he could get it.

Q. How long was it from the time you first became acquainted with Mr. Crossfield till you came away?

A. About five months.

Q. And he lived in intimacy with you, and those other gentlemen, all the time?

A. Yes; he dined and supped with those gentlemen every night, unless they happened to be on board the Commodore, or on shore.

Q. Consequently all those gentlemen lived with him too, all those five months?

A. Yes.

Q. Therefore every single thing you know they must have known, excepting the private question you asked him, where he shot at the King?

A. They must have known the main part; there was nobody in the cabin but me when he told me about shooting at the cat with a dart.—There was a little of the grog dropped on the table, he marked with his finger, and shewed me in what manner he made it.

Q. Do you remember any thing about the story of a hare, perhaps you may think it odd you should be asked that question?

A. No.

Q. You do not remember any thing of a story that used to entertain the company very much, about a hare jumping into your lap?

A. No, only into my arm.

Q. What was that story?

A. I was coming through Uplime to Lime, in my way from Axminster, just as I got to a wall, I stopped to make water, as I was buttoning up the fall of my breeches, a hare came through my arm, I caught him by the leg and turned him round, it was about twelve o'clock at night, I threw him in over the gate in among a parcel of dogs, and he remained there that night, and the next day, just as the parson was going away to church, the hare got out, and the dogs followed it all through Lime, there they caught the hare and it was carried up.

Q. Then you threw the hare over the wall among the dogs?

A. Yes.

Q. How long did the hare remain among the dogs?

A. Till after dinner.

Q. This was a story that used to amuse the company very much?

A. Yes;

*A.* Yes; I have told it oftentimes.

*Q.* What did you take this hare to be?

*A.* I could find nothing of him till after I was going to church; I was just got as far as the shambles when I heard the dogs out in full cry after the hare.

*Q.* After she had lodged very comfortably among them for many hours?

*A.* Yes; after the bones had been carried out to the dogs, which, I suppose, drew the dogs out.

*Q.* What did you tell those gentlemen you took this hare to be?

*A.* To be a hare.

*Q.* How did you think this extraordinary hare could live so long among the dogs without being destroyed?

*A.* If you send to Lime, if any gentleman disputes my veracity, there they will get a voucher for it.

*Lord Chief Justice Eyre.* The gentleman asks you what you took the hare for; I suppose he means to ask you whether you took her for a witch?

*A.* They say the place is troubled; now I took it to be an old hare.

*Mr. Adam.* Did not you use to tell those gentlemen, in the course of conversation, that you took this hare to be a witch, or the devil in the shape of a hare?

*A.* No; it was an old hare that had been hunted many times by the dogs, and they never could catch him; if you want a voucher for it, if you send to Lime, you may get vouchers.

*Lord Chief Justice Eyre.* Where did you throw this hare into?

*A.* Over a place seven feet high, among a kennel of hounds, and it was twelve o'clock at night.

*Mr. Adam.* Were you ever sworn before a Jury before?

*A.* I have been upon a Grand Jury twenty-five years.

*Q.* I ask you, whether you were ever sworn as a witness in a Court of Justice before?

*A.* Many times.

*Lord Chief Justice Eyre.* A Grand Jury, where?

*A.* In St. John's, Newfoundland.

*Mr.*



*Mr. Attorney General.* You raised a corps of troops in Newfoundland?

*A.* Yes.

*Q.* Of how many?

*A.* During the American war I raised fifty; and during this war sixty-nine: I supported fifty men myself during the whole American war.

*Richard Penny, (sworn.)*

Examined by *Mr. Abbot.*

*Q.* You were Master at Arms of his Majesty's ship *Active*?

*A.* Yes.

*Q.* You were taken prisoner, and carried into Brest?

*A.* Yes.

*Q.* What was the prison-ship you were on board of there?

*A.* The *Elizabeth*.

*Q.* Was the prisoner *Crossfield* on board the same ship?

*A.* I know the prisoner if I see him.

*Q.* Do you see any body there whom you remember to have seen on board the prison-ship?

*A.* I know the man if he stands up, in a moment.

*Mr. Abbot.* Go down, and walk round among the people, and look for him. (*The witness pointed out the prisoner.*)

*Q.* Do you remember hearing him sing a song?—I do not ask what it was.

*A.* Yes.

*Q.* Do you remember having any conversation with him the next morning, in consequence of having heard him sing that song?

*A.* Yes.

*Q.* Did you say any thing to him, upon that occasion, respecting the King of England?

*A.* The song was—"damnation to the King;" I asked him what King, he said—"the King of England."

*Q.* What observation did you make to him upon that?

*A.* No more.

*Q.* What

Q. What further did he say relating to the King of England?

A. He mentioned something in the song about Mr. Pitt.

Q. But what did he say next morning further concerning the King of England?

A. I said, Doctor, you never can be a true Englishman, to sing that song; he said—"he was one of the ringleaders of the three that attempted to blow the dart at his Majesty in Covent Garden."—If Mr. Crossfield does not remember me, I will put on my jacket I wore in the French prison with him.

Q. Did he express any sorrow at being a prisoner in France?

A. No; he said—"Tom Paine's works were the best works"——

Mr. Adam. I submit to your Lordship, whether we are to hear every part of this conversation?

Lord Chief Justice Eyre. Having proved that the prisoner said he was one of the three who attempted to blow the dart at the King, in Covent Garden, I take it to be within the rule the Court has already laid down, when a fact which does apply to the charge is proved, that what goes so far to the same subject as to be corroborative is evidence.

Mr. Adam. My objection was, that the prisoner said Tom Paine's works were the best works.

Lord Chief Justice Eyre. That, standing alone, would not be any thing, you must hear the sentence throughout: but you broke in just as something was coming that was material.

Mr. Adam. Then, can Tom Paine's works be a subject for the consideration of the Jury?

Lord Chief Justice Eyre. Certainly not: but if a man puts two things into one sentence, you must necessarily hear both, and reject that which does not apply.

Mr. Abbot. What more did he say?

A. He said—"Tom Paine's works were the best works he could buy; and that if ever he arrived in England he would attempt to do the like again."

Q. When you returned to England in the cartel ship, did the prisoner return with you?

A. He

*A.* He did so.

*Q.* Did he say any thing to you, on board that ship, as you returned home?

*A.* Before he came out of Brest he mustered me on board; I was close to the main-mast, on the Elizabeth's deck; and before we came in to Mevagissy, he said to me—"Young man, was not you on board the Elizabeth?" I told him I was; "he desired I would take no notice of what was said on board of the Elizabeth."

*Q.* How come you to give evidence upon this occasion?

*A.* For my King and Country.

*Q.* Did you give information to any body of this?

*A.* I gave information to a gentleman at Portsmouth?

*Q.* Did you lay any information before any magistrate?

*A.* I swore it before a magistrate.

*Lord Chief Justice Eyre.* How soon after you landed did you mention this at Portsmouth?

*A.* I mentioned it at Portsmouth to a gentleman on board of the Royal William; he persuaded me to go to Mr. Greetham, the King's Solicitor there: I went as soon as I had an opportunity.

*Richard Penny,*

Cross-examined by *Mr. Gurney.*

*Q.* When did you first go on board the Elizabeth prison-ship?

*A.* On the 22d of December, 1795.

*Q.* You found Mr. Crossfield on board that ship?

*A.* I did not.

*Q.* On board what ship was he?

*A.* I understood he was on board a south-sea man.

*Q.* I am asking about the prison-ship—Did you find Mr. Crossfield on board the prison-ship?

*A.* He came on board the Elizabeth.

*Q.* How soon after you were there?

*A.* He came in March.

*Q.* Then



Q. Then it must have been in December, 1794, not 1795, when you first went on board the Elizabeth?

A. Yes.

Q. It was some months after you were on board the Elizabeth before Mr. Crossfield came there?

A. Yes.

Q. How long was he on board that ship?

A. Above a month before he went up to Landernau.

Q. How many persons were of the Captain's mess on board that ship?

A. He messed close to the wheel.

Q. Who were the persons in his mess?

A. One of the witnesses in the Court was one that messed with him.

Q. Point him out.

A. He is not here.

Q. Do you mean Dennis?

A. Yes.

Q. Was Captain Clarke one?

A. I cannot rightly say.

Q. How many were there of them in the mess?

A. Seven.

Q. Were you in that mess?

A. No.

Q. You were on board the same ship?

A. Yes.

Q. Did you talk with Mr. Crossfield?

A. No, only after that song.

Q. Had you any conversation with him at any other time?

A. No, only those words upon the poop.

Q. Had you any conversation with him at any other times?

A. No, because he went from the Elizabeth up to Landernau.

Q. You were a month with Mr. Crossfield in that prison-ship—had you any other conversation with him than that which you have told us?

A. He declared more to me at that time.

Q. I am asking whether he had other conversations with you besides that time?

A. Not after that time.

*Richard Penny,*

Re-examined by *Mr. Abbot.*

Q. You say he declared more to you—what did he declare more?

A. When we were coming home, he begged me not to say any thing about what he had said to me; after we were mustered on board the cartel, I saw Mr. Croftsfield in very close conference with the French officer abaft the poop, and they shook hands together; that was a gentleman that came from Brest.

*Lord Chief Justice Eyre.* Have you any thing more to say?

*(The witness gave no answer.)*

*Lord Chief Justice Eyre.* Did you hear my question?

A. Yes, my Lord.

*Lord Chief Justice Eyre.* I am waiting for an answer—What did he say more?

A. I suppose your Lordship has got down, that after he had sung a song, wishing damnation to the King, I asked him what King, and he said the King of England—that he said he was one of the ringleaders of the three that attempted to blow the dart at his Majesty in Covent Garden, and that if ever he arrived in England he would endeavour to do the like again—that he said Tom Paine's works were the best works he could buy—that he desired me not to take any notice of what he said on board the Elizabeth, that he was one of the three.

*Walter Colmer, (sworn.)*

Examined by *Mr. Law.*

Q. You live at Fowey, I believe?

A. Yes.

Q. Do you remember, on the 31st of August last, being employed to apprehend Croftsfield?

A. Yes.

Q. Who assisted you in apprehending him?

A. Mr.

A. Mr. Stocker.

Q. Where did you take him?

A. On board the cartel lying at Fowey.

Q. Did he answer to the name of Crossfield?

A. He did.

Q. Were you employed in carrying him to Bodmin gaol?

A. Yes.

Q. Do you recollect having any conversation with him upon the road?

A. Yes; he said—"he would give us a guinea to let him go, and take the irons from his hands; that we should only have a few shillings for carrying him to Bodmin, and he would give us a guinea each to let him go:" some time after that, he offered us two guineas each; I asked him what he would do with the driver, he told me—"if I would let him have one of the pistols, he would pop at him, and soon settle that business."

Lord Chief Justice Eyre. You had pistols with you in the chaise?

A. Yes.

Mr. Law. I take for granted you did not do what he desired—neither take the money nor lend him the pistols?

A. No.

Walter Colmer,

Cross-examined by Mr. Adam.

Q. What state was he in, at the time you took him on board the ship?

A. That was in the morning—it was in the evening when we were going to Bodmin.

Q. What sort of condition was he in then?

A. Whether he was in liquor or not I won't say for that.

Q. Now, don't you think he was very much in liquor?

A. He might be a little in liquor, but I do not think he was very much.

Elizabeth



*Elizabeth Upton, (sworn)*

Examined by *Mr. Garrow.*

Q. You were the wife of a person of the name of Thomas Upton?

A. Yes.

Q. Who has been under examination before the Privy Council?

A. Yes.

Q. Where did you reside at the time you last saw your husband?

A. In Wapping.

Q. When did you see him last?

A. On the 22d of February.

Q. That, I believe, was on a Monday?

A. It was.

Q. At what hour in the morning did he leave his home?

A. Between eight and nine.

Q. Did you ever see him afterwards?

A. No, never.

Q. Have you since seen any article of wearing apparel which he wore at the time he left his home?

A. No.

Q. His hat, or any thing else?

A. Yes, I have seen his hat; the waterman brought it me the next morning.

Q. What is the name of the person that brought it?

A. Thomas Annis.

Q. He brought a hat which your husband had worn when he went from home?

A. Yes.

Q. Had your husband given you any thing when he went from home the last morning?

A. He gave me a seal.

Q. Was that a seal which he usually wore?

A. Yes, which he usually sealed his letters with.

Q. Have you never seen him since?

A. I

*A.* I have not, nor heard of him.

*Q.* Except by the information of this waterman?

*A.* Yes.

*Q.* Have you any reason to know or believe that he is now alive, or do you believe he is dead?

*A.* I believe he is dead—I know nothing to the contrary.

*Q.* Was he a man addicted to drinking, or a sober man.

*A.* I never saw him disguised in liquor in my life.

*Lord Chief Justice Eyre.* I do not see the necessity of this evidence.

*Mr. Attorney General.* I stated Upton's giving information as an accomplice, and I gave as a reason why I could not produce him here, his being dead.

*Lord Chief Justice Eyre.* I should have taken it upon your assertion, not as a subject of evidence, that you do not call him, because he is dead.—If that were controverted in any way to raise a question upon it, to be sure you would be at liberty to prove it.

*Mr. Garrow.* If your Lordship is satisfied that this is reasonable evidence of his death, we do not mean to go into any more of it.

*Lord Chief Justice Eyre.* Certainly.

*Mr. Garrow.* Do you know a person of the name of Crossfield?

*A.* Yes.

*Q.* Do you see him here?

*A.* Yes.

*Q.* Have you seen him, and seen him more than once, at your husband's house?

*A.* I have.

*Q.* Have you seen him there before your husband was examined by the Privy Council?

*A.* Frequently.

*Q.* Do you know Mr. Palmer the attorney?

*A.* Yes, I see him there.

*Q.* Have you seen him at your husband's house?

*A.* Yes, frequently.

*Q.* Have you seen him there in company with the prisoner Crossfield?

K

*A.* Yes.

*A.* Yes.

*Q.* Be so good as look at this piece of wood (*the model for the tube*)—Did you ever see this before?

*A.* I think I have seen them lying in the shop in my husband's house in Bell-yard.

*Q.* Do you know a person of the name of Hill?

*A.* Yes.

*Q.* Do you recollect seeing him at your husband's house?

*A.* I have seen him.

*Q.* Did you see this brought to your husband's shop?

*A.* I saw something brought one night by Mr. Hill which appeared to be like this—I believe this to be it.

*Q.* Look at this (*A long brass tube*)—Did you ever see this before?

*A.* I do not recollect that ever I did.

*Q.* Cast your eye upon that paper—Did you ever see that paper in your husband's possession?

*A.* I do not recollect to have seen any thing of this kind.

*Elizabeth Upton,*

Cross-examined by *Mr. Gurney.*

*Q.* Where did you reside, Mrs. Upton, at the time you last saw Mr. Upton?

*A.* In Wapping.

*Q.* Do you reside there now?

*A.* No.

*Q.* Where do you reside now?

*A.* In Gray's-inn-lane.

*Q.* Have you lived there ever since you lost your husband?

*A.* Yes.

*Mr. Attorney General.* It has been proved—I mean that evidence has been given to prove that Upton was concerned with the prisoner in ordering certain materials for this instrument, I am now going to prove Upton's possession of such a thing, and his possession of the paper which contains the description and draught of a bearded dart.

*George*



*George Steers, (sworn)*

Examined by *Mr. Wood.*

Q. Where do you live?

A. In Gatwood's-buildings, Hill-street, Finsbury-square.

Q. Are you a member of the London Corresponding Society?

A. No, nor never was.

Q. Did you ever attend any of their meetings?

A. I did once unfortunately attend one meeting, with two fellow-clerks of mine.

Q. When was that?

A. The latter end of the year 1794.

Q. In what month?

A. I believe it was about the month of August, but I am not certain.

Q. Did you know Mr. Upton?

A. I knew him no otherwise than by seeing him the night I attended that meeting; I never saw him before nor since.

Q. Did you sit near him?

A. Yes; and a fellow-clerk of mine sat next to him.

Q. What sort of person was he?

A. I do not believe that I should know him otherwise than his being lame in one foot.

Q. Did you observe any thing that he had with him?

A. I observed he held something in his hand, which I thought from his being lame was a walking-stick.

Q. Did you ask to see it?

A. No, not being a member of the society, I had no right to ask any person in the room any question whatever.

Q. Did any body else ask to see it?

A. A fellow-clerk of mine asked him what it was, but I did not hear him give any answer for what purpose it was intended.

Q. Did he produce it?

A. He shewed it him in his hand.

Q. What was it?

A. I perceived by the light, that it was brass.

Q. Was it any thing like that? (*the brass tube*)

A. Yes; I made no particular observation of it, but from what I saw, it was in appearance the same as that—it is I believe, the same thing as was produced to me before the Privy Council; I made no mark on it, I believe it to be the same from its appearance.

*William Henry Pusey, (sworn)*

Examined by *Mr. Wood.*

Q. Were you at the meeting of the Corresponding Society, with the last witness Steers, on the 16th of September, 1794?

A. I was with him; but I cannot speak as to the time.

Q. Do you remember being with him one evening in September 1794?

A. I remember being there at the time, which I suppose you allude to.

Q. Do you remember being there one evening when Upton was there?

A. I do.

Q. Do you remember seeing any thing particular under Upton's coat?

A. Yes.

Q. What was it?

A. A tube.

Q. Was it like this? (*the brass tube*)

A. Something resembling this.

Q. Had you any conversation with Upton about it?

A. Yes, I asked him what it was, I cannot say positively whether I spoke to him first or he to me, I think I asked him first what it was, I saw a bit of it sticking out from under his coat, he pulled it further out, that I could perceive it better; upon asking him what it was, he did not give me any answer, but shook his head in that manner, (*describing it*) he did not tell what it was for.

Q. Did you ask him what it was for?

A. I did.

Q. Did

Q. Did he tell you, or refuse to tell you?

A. He did not say I won't tell you, but he shook his head and made no answer.

Lord Chief Justice Eyre. Did you take any notice whether it was hollow or not?

A. I think it was hollow.

Lord Chief Justice Eyre. Had you any opportunity of seeing the light through it?

A. No; but from the best of my recollection it was hollow.

Mr. Law. Did it appear to you to be a hollow or a solid instrument?

A. I do not think it was a solid instrument.

*Edward Stocker, (sworn)*

Examined by *Mr. Garrow.*

Q. I believe in the month of August last you were one of the constables of the Borough of Fowey?

A. Yes.

Q. Had you together with Mr. Colmer, the charge of the prisoner Crossfield, to conduct him to Bodmin Gaol?

A. Yes.

Q. What is the distance from the place where you took him into custody to the gaol?

A. About twelve miles.

Q. You went in a chaise?

A. Yes.

Q. State what conversation the prisoner addressed to you and your fellow constable in the course of your journey?

A. He offered us two guineas.

Q. State what he said to you?

A. He said, in the first place—"that it was better we should take a guinea each, and let him go,"—he said, "he was man enough for us both"—then he said "he would give us two guineas each,"—Mr. Colmer asked him what we should do with the driver; he said, "lend me one of your pistols, and I will pop at him and settle that matter."



Q. Was there any conversation as to the quarter from whence the money was to come, if you would accept of it?

A. None at all; he said, "he would give us a draft on some person at Fowey,"—I asked him if he knew any inhabitant, he said, "he did not know any inhabitant at Fowey; that it was a person at Fowey, but not an inhabitant."

Q. You conducted him safe to goal?

A. Yes.

*Edward Stocker,*

Cross-examined by *Mr. Gurney.*

Q. At what time did you leave Fowey to go to Bodmin?

A. About nine in the evening.

Q. Mr. Crossfield I believe was not very sober at that time?

A. I do not know.

Q. Are you quite sure that Mr. Crossfield was perfectly sober?

A. I do not know that he was in liquor, he might or might not.

Q. Are you not quite sure that he was not sober?

A. I am not sure; I do not think he was much in liquor.

Q. Was not his manner of speaking very queer?

A. I do not know as for his manner of speaking.

*Edward Stocker,*

Re-examined by *Mr. Garrow.*

Q. You were not acquainted with Mr. Crossfield before?

A. No.

Q. Had he had the means of getting intoxicated, as far as you know?

A. I do not know whether he had or not.

Q. Did he appear sober enough to know what he was talking about?

A. I believe he was not disguised in liquor; I do not know that he was.

*Mr. Gurney.* Did Mr. Crossfield sleep in the post-chaise?

A. He fell asleep after we came about half-way.

Q. And slept on all the rest of the way?

A. Yes.

*Lord*

*Lord Chief Justice Eyre.* At what time of day or night was it?

*A.* We set out at nine in the evening from Fowey.

*Mr. Harvey Walklate Mortimer, (sworn)*

Examined by *Mr. Garrow.*

Q. You are a gun-smith, residing in Fleet-street?

*A.* Yes.

Q. For how many years have you been engaged in that business?

*A.* Thirty years; thirty and a half I believe.

Q. You have been used not only to the construction of common fire arms, but to the construction of the air gun?

*A.* Yes.

Q. Are air guns sometimes constructed in the form of a walking stick?

*A.* Yes.

Q. Is it one of its properties to discharge and accomplish its object of destruction without explosion?

*A.* Not entirely without explosion; if it is discharged where the air passes briskly by, you cannot hear it yourself; but if it is in a confined room, where the external air does not pass freely by, it makes a noise like that. (*clapping his hands together*)

Q. It would make less noise in the explosion I conclude in a large theatre than in a small room?

*A.* Certainly.

Q. Is it another property of an air gun, to have less recoil than the explosion by gunpowder?

*A.* It has so little recoil, that if you were to hold it against your face with a glass upon your eye, you would not perceive it injure the glass.

Q. You might rest it upon your cheek bone?

*A.* Upon your naked eye.

Q. So as to take a most accurate aim?

*A.* I have shot with it so as to hit a nail twice out of thrice upon the head, and drive it through a board; I have used it when

a gentleman has desired to hold a small thing between his finger and thumb, while I have shot at it.

Q. Perhaps it is not necessary to go too minutely into these discussions, unless it is thought necessary on the other side—do you apprehend that the tube of an air gun may be so constructed as to discharge an arrow, instead of the ordinary discharge of a bullet?

A. I am sure it may.

Q. Cast your eye upon this paper, and tell me whether you think an arrow constructed according to that drawing might be discharged, and whether it would not be a dangerous instrument to be discharged by the explosion of an air gun?

A. Here is a drawing of two arrows, one of which is barbed, another that is not barbed.

Q. Supposing the barbed arrow so constructed, as that the barbed parts of it might be made to collapse, and so to enter in that state the opposing body; and supposing something consisting of two barbs in the shape of an arrow, to be put in a collapsed state into an air gun and protruded by the force of the air, could it be forced out in its collapsed state?

A. It might; but as soon as it was out it would regain its native position.

Q. You see no difficulty in putting a barbed instrument into an air gun to be exploded?

A. It depends upon the strength of the springs of the barb, if the springs are weak it might be done—but those springs could not act without a joint, in the part near the end of the place where this barb is, they must act upon a joint.

Q. We suppose it has every thing necessary to constitute a complete instrument?

A. It would undoubtedly expand again when it came out into the air.

Q. Have you any doubt that an instrument so constructed, projected by the force of the air gun, would occasion death?

A. I should have no doubt; I think it would be a dreadful instrument, if it was projected from an air gun.



*Lord Chief Justice Eyre.* Can you give us any information concerning these two particular pieces of wood, that are supposed to be models of something?

*A.* This might be made for such an instrument as this; it might be made into a tube for a condenser, supposing this part to be left for the bore, to make a tube inside; I should think it too large—I should not think it well contrived.

*Mr. Garrow.* Your knowledge of the science would induce you to make the bore smaller than that proposes it to be?

*A.* Yes.

*Lord Chief Justice Eyre.* Is there any appearance of a bore in that model?

*A.* The two ends describe the bore.

*Mr. Garrow.* And the larger part the external space?

*A.* It appears so.

*Q.* Supposing I had wanted a cylinder of the external dimensions of the largest of these pieces of wood, and a bore of the size of the other; would not that drawing have enabled you to make it of the required thickness?

*A.* I should have some idea of it from this, but I should have asked a question or two as well as seeing this—this could never have been designed for the internal part of an air-gun, formed into a walking stick; if this was designed for a piston to condense the air, it must have been unconnected with the gun, and only have screwed on to it for the purpose of condensing it; I should have made my air cane or air gun, if I had made it with the piston entirely in the hand, that nobody should have seen it; this if it was made, must have been made to have been put on occasionally, not to have been in the hand.

*Q.* Supposing such a piston to be applied to a brass tube, would it not become an instrument of death with such a barbed arrow as we have talked about?

*A.* This wood might be a model for making a piston to contain air enough in a brass tube to have expelled three or four times, without re-charging, such an instrument of death; I could have made one from that model, if I had been informed they wanted

wanted it made in that way, I could have so done it; but this is not well done.

Q. Look at this paper, does that top appear to be a description of such a wooden instrument as this, though not a very accurate one?

A. Certainly, it does something like that; but it is evident that the person who drew this was not a master of drawing?

Lord Chief Justice Eyre. Does it describe sufficiently these two pieces?

A. I have seen but one.

Mr. Garrow. Look at the other part, and see whether that drawing describes this?

A. I think I should not have an idea of this form from this, it is drawn so very badly.

Q. Looking at the two together do they appear, though badly described, to have such a correspondence that one may be made from the other, with some verbal assistance by way of directions?

A. With verbal assistance it might, but I do not think it could be made without—I cannot say that there is any thing in it that is sufficiently like it, for me to suppose it was made from this drawing, unless the person had some verbal directions besides—the top part is well enough described the piston.

Q. I observe the drawing you have in your hand has got additions to it; there are rather round parts which it is necessary to be made acquainted with the drawing to describe; but looking at that drawing, do you take that to be a drawing of the thing that you hold in your right hand? (*the model*)

A. If I had seen them together upon a table, I should not have supposed that this had been a drawing of this; and it could not have been a drawing of it without verbal explanations.

Lord Chief Justice Eyre. The question is whether with verbal directions the two pieces of wood you have in your hand might have been formed from the hint given from that drawing?

A. Very indifferent drawings will do with verbal directions.

Lord Chief Justice Eyre. Do you suppose that with verbal directions

directions these two pieces of wood might have been formed from the hint given by that drawing?

*A.* I have no doubt of it.

*Mr. Harvey Walklate Mortimer,*

Cross-examined by *Mr. Adam.*

*Q.* If this brass tube had been put into your hands without any thing being said about it, should you have known for what use it was made?

*A.* It is impossible that I should have known what it was for, without any thing being said about it.

*Q.* You have said you do not make air guns in this form?

*A.* We make them in a snugger and neater form.

*Q.* Are you in the common practice of making air guns?

*A.* Yes,

*Q.* And you make them like a common walking stick?

*A.* Yes; sometimes I make them in the shape of a common gun, sometimes in the shape of a pistol; I have pistols now in the shop.

*Q.* Do not you make them in the form of a walking stick?

*A.* Yes.

*Q.* And then you make them portable?

*A.* Yes.

*Q.* Have not you made them frequently in that form for sale?

*A.* Yes; I sold one which his Majesty sent as a present to the Dey of Algiers, a little while ago.

*Q.* So that the piston for the condensed air should lie within the cane?

*A.* Yes; I can make them either within it or without it; I have made many guns with the piston within, and others without it.

*Q.* You said that a barbed arrow might be put into a gun; but would not the consequence of firing it out of the gun, be that the moment the resistance of the sides of the cylinder of the gun are withdrawn by the arrow getting beyond into the open air it would open?

*A.* I have some doubt about that; a barbed arrow may be put



into a gun with a great deal of ease, but the end before you get to the point must be solid ; at the end of that barb there are two joints, each of which will bend, but being bent only a little it will open—it will keep closed as it flies till it strikes a body, and when it enters the body it will immediately open at the two parts where there are the joints, and it will let out whatever is in it ; but in passing through the air, be it ever so far, it is not in the least injured, and if it were ever so full it could not be discharged of its internal matter till it struck the body—now that arrow could be easily made, and if the bottom part were made hollow you might put a little condensed air, so that whenever it strikes against any body it should force out what was in it, by the pressure of the air which was behind it—if it was so made it must be feathered, as that appears to be upon the drawing, but it must be feathered more than that, so as to press equally totally round the cylinder, and the pressure of the whole force of the air would be entirely upon it—I could with a tube which I take in my hand blow without any condensed air whatever, I could with my mouth blow an arrow of that sort, if within six or eight yards, with sufficient force to do a mortal injury to any man living—my men are frequently trying little experiments.

*Lord Chief Justice Eyre.* Be content just to answer the questions ; what is the precise question you asked him ?

*Mr. Adam.* He has answered to all that I wish to ask him—the object of my question was merely to know whether the arrow collapsed immediately as it comes out of the barrel, he says it does not.

*Mr. Garrow.* Did you ever sell any of these walking sticks ?

*A.* I did formerly to any that would purchase them ; I have not for some years, I thought them dangerous.

*Lord Chief Justice Eyre.* Looking at these two pieces of wood and at this paper, can you from their construction be able to inform the Jury for what use these two pieces of wood were intended ?

*A.* I verily believe for the purpose of an air gun.

*Lord Chief Justice Eyre.* That is what you believe ?

*A.* I do verily believe so—the use of them I cannot tell.

*Lord*

*Lord Chief Justice Eyre.* An air-gun will, I suppose, carry an arrow, or shot, or a ball?

*A.* I can shoot a ball at sixty yards very strong.

*Lord Chief Justice Eyre.* But your judgment is, that these two pieces of wood appear to be the models of that which is to make part of an air-gun?

*A.* Taking the tube and the models together, I am satisfied they were for an air-gun.

*Lord Chief Justice Eyre.* What tube do you mean?

*A.* This long brass tube.

*Lord Chief Justice Eyre.* Supposing the long brass tube was entirely out of the case, what do you say then?

*A.* It would be satisfactory to me that there was something of that kind intended to be made, but not so satisfactory as with the tube; it is an additional evidence in my mind.

*Robert Ward, Esq. (sworn)*

*Examined by Mr. Attorney General.*

Q. You are a barrister at law, I believe?

*A.* Yes.

Q. I have occasion to ask you about Mr. Upton, of Bell-yard; it will not be proper to state any conversation, I will only ask you as to a fact.—Do you remember seeing Upton in August or September, 1794?

*A.* It was the 12th of September, 1794.

Q. Have you seen these two papers before?

*A.* I am clear, as to this paper with the drawing of the barbed arrow—I saw this in the possession of Upton, on the 12th of September, 1794. I am not quite so clear as to the other.

Q. It was at Upton's house, I believe?

*A.* It was.

Q. Did you happen to see this in Upton's possession?

*A.* I saw these models, but not the tube.

*Robert*

*Robert Ward, Esq.*

Cross-examined by *Mr. Gurney.*

Q. At what time did you communicate this fact to any of his Majesty's ministers?

A. I think it was on the Friday, when I saw this in the possession of Upton, and, I think, on the Saturday I waited on Mr. Pitt, but I did not see Mr. Pitt till the Wednesday following.

*Mr. Attorney General.* Did you communicate it to any magistrate?

A. No; I did not see any body upon the subject, till I saw Mr. Pitt.

*Mr. Attorney General.* We have closed the case for the prosecution.

*Mr. Adam.* I beg to ask a question or two of Mr. Palmer.

*Mr. Peregrine Palmer, (called again)*

Examined by *Mr. Adam.*

Q. Do you know any thing of Mr. Crossfield's pecuniary circumstances?

A. Yes, I do.

Q. In what circumstances was he at the time he left London?

A. His whole property was assigned over for the benefit of his creditors.

Q. Was he in debt do you know?

A. Yes, he was.

*Mr. Adam.* I think it right to inform your Lordship, that I am afraid it is absolutely impossible for me to bring the case I have to lay before the Court, within such a compass as to give me the least hope of producing the evidence, in favour of the prisoner, while the Jury are able to give that attention to it which it is of importance to him they should give; but I am ready to do exactly what your Lordship pleases.

*Lord Chief Justice Eyre.* I am afraid we shall be under the necessity of going on, if there will be any prospect of finishing to-morrow.



to-morrow.—There is, I believe, no provision made for the Jury.

*Mr. Adam.* The same thing happened on the trial of Mr. Stone, and the Court adjourned.

*Lord Chief Justice Eyre.* As far as concerns the capacity, I should have to do the Country and the prisoner justice, I should be glad of the accommodation of an adjournment.

*Mr. Gurney.* The Jury were accommodated with beds at the London Coffee-house, on the late trials.

*Mr. Adam.* I do not speak with a view to any personal accommodation to myself; but because I am aware that the case, which I have to lay before the Court, must necessarily take up so much time, as will make it impossible almost for human strength to go through it, without an adjournment.

*Lord Chief Justice Eyre.* I should be sorry, if by forcing you on, we should put you under any incapacity to do your duty.—I find the Sheriffs have provided lodgings for the Jury.—What do the Jury say about it?

*Several of the Jury said, they felt themselves so much fatigued that they were persuaded they should not be able to give proper attention to the case of the prisoner, unless the Court adjourned till the morning.*

*It being now past eleven o'clock at night, four Officers were sworn, in the usual form, to attend the Jury, who slept at the London Coffee-house; and the Court adjourned to the next morning eight o'clock.*

THURSDAY, MAY 12th, 1796.

*The Court being opened, Robert Thomas Crossfield was set to the bar.*

MR. ADAM.

May it please your Lordship,

Gentlemen of the Jury,

It is now come to that stage of this cause, when I am to address you upon the part of the prisoner. Gentlemen, I cannot help congratulating you, and I cannot help congratulating myself, that the measure of adjournment from the heat of the Court of last night, to the quietness and composure of this morning has taken place. I am sure, Gentlemen, it is for the benefit of us all, that we come here with fresh recollections, that we come here with our minds not impaired by a long and a fatiguing attendance, in order to discharge that most important, that most weighty, and, to me, that most awful duty which is now to be discharged.

Gentlemen, I may fairly say, because I can say it with truth, and with energy equal to its truth, I never before stood in such a presence.

Gentlemen, it never happened to me before, in the course of my professional life, to be engaged as the person who was to lead in conducting the defence of a prisoner in a trial for his life. Far less has it ever happened to me to be charged with the life of a prisoner, tried for the crime for which the prisoner at the bar now stands indicted. Gentlemen, when I mention these circumstances, I can assure you, and I can assure the learned and the respectable Judges, who preside upon this occasion, that I make this declaration, not with a view of consuming your time by any vain or any particular applications to myself; I do it, because I think upon this occasion, it will suggest that, which, if it were necessary to inculcate, I am sure I have much need of, namely, that the learned and respectable persons who preside here, will consider themselves as Counsel for the prisoner. I know it is their disposition, I know it is the constant and general tenor of their practice; and I am sure that I stand in need, and my client, trusting his cause in my hands, stands in need of that aid.

Gentlemen,

Gentlemen, I trust too, if any thing were wanting to excite your attention, to awaken your feelings, or to call upon you for a patient hearing of this case, my insufficiency will excite those exertions in you. And coming into this Court with the determination (impressed upon all your minds) impartially, patiently, and with that integrity which is your "true portion and proper virtue," to consider this cause; I know that all these qualities will be roused by the particular circumstance in which I have described myself to stand.

Gentlemen, I can assure you, that from the moment I left the Court, last night, to the moment I am now addressing you (I might almost say even during the few hours of refreshment by sleep, which I had an opportunity of taking) that my mind has been constantly employed in this weighty, in this important matter. I have endeavoured to use that time to the best advantage, for the purpose of defending the prisoner at the bar; and for arranging the matters which I have to discuss, in the best order that I am capable of.

Gentlemen, before I proceed to state the observations that I have to make, either upon the nature of the case, or upon the evidence as it has been laid before you, I will take the liberty of shortly presenting to you, what I consider to be the question now to be tried.

Gentlemen, the prisoner at the bar is, as Mr. Attorney General stated, indicted for High Treason. The particular species of High Treason, for which he is indicted, is that of compassing and imagining the death of the King. By the law of the land, as was stated to you, by Mr. Attorney General, the will in that case goes for the fact. That is to say, the intention of killing the King is as much a crime as if the fact were actually committed. And I agree, perfectly, with my learned friend, that it is impossible to conceive a wiser institution. Now I enlarge upon his statement: for if that institution is wise for the purposes of Monarchical Government in general; it is particularly wise as applied to the Government of this Country. In this mixed Monarchy where the nature of our Government gives a free scope to a variety of political opinions, and modes of

L. thinking;



thinking; it becomes more particularly necessary to protect the person, who unites and fortifies the general system and frame of our Constitution. At the same time, however, that the Legislature has been cautious, and has peculiarly interfered to guard the sacred life, on which, I assert (with the same energy as Mr. Attorney General) the well being of the state so much, so eminently depends; it has been most anxious to fence and guard the critical situation of the prisoner. To take care that he shall have a fair trial; to lay down certain rules for the manner of assembling you in the place where you are now seated; to regulate the principles which are to guide you in considering the evidence. Thus while the Law and Constitution wisely protect the Crown, by rendering the will equal to the deed, it is equally cautious that as that is a most difficult situation, in which to place a subject upon all occasions, and as that difficult situation is peculiarly applicable to the case of Treason; the same Law and Constitution have provided those safeguards for the subject to which I have alluded.

Gentlemen, one of those safeguards of the subject is, that there shall be stated upon the face of the indictment, those *overt acts* or *open deeds*, which are supposed to have the tendency to accomplish the end in question. Upon the present occasion you have had it stated to you (and I will, therefore, only recite it again shortly to you)—You have had it stated, that this indictment does state such overt acts: that it states, in the first place, a conspiracy between the prisoner, and three other persons, who do not now stand upon their trial, and persons to the Jurors unknown, to prepare a certain instrument, to be loaded with a certain arrow, to be sent forth from thence, for the purpose of taking away the life of the King. It likewise states the same overt act, but states it without laying it to be done in conspiracy with others.—It likewise states overt acts of consultation, where they consulted and conferred together, for the purpose of taking away the life of the King. These are, generally speaking, the nature of the overt acts stated in the indictment. You will observe throughout, Gentlemen, that there are two distinct propositions in this case—One proposition is, that there was an instrument

strument prepared, or ordered to be prepared; another is, the intent or the purpose to which that instrument was meant to be applied. These are in their nature distinct propositions. They are distinct propositions upon the face of the indictment; and they are distinct propositions in the proof; as I shall have occasion afterwards to shew you when I come to speak to that part of the evidence.

Gentlemen, you have heard upon this occasion, that there have been various rules laid down by lawyers, relative to the manner in which evidence in a question of this nature is to be considered by a Jury. To this I assent; but there is no very difficult question of law upon the application of the rules of evidence in this case; so that I shall have the happiness, I trust, of making myself distinctly understood to you upon the present occasion. Gentlemen, my learned friend, the Attorney General, cited his doctrines of the law of England, with respect to Treason, from an authority to whom he paid the highest tribute of applause. To that authority no tribute of praise is too great. I allude to Mr. Justice Foster, whose name he truly said would live as long as the Constitution of England endured.

Gentlemen, I shall have occasion, in the sequel of what I shall be under the necessity of addressing to you, to have recourse to the doctrines, and to the learning of that eminent person; but I flatter myself, that neither of the learned Judges upon the Bench, nor you whom I have now the honour more directly to address, will think that I deviate in the smallest degree from that propriety which is due to your situation, from that rule of conduct which relates to mine, from that duty which I owe, above all, to the prisoner at the bar, if I call your attention back to a much more early period of the English history, and of the English law. If I endeavour to adduce my doctrines from persons who wrote, comparatively speaking, in times of antiquity.—That I may shew those doctrines to have been continued from that early period down to the present moment, to include the time in which Mr. Justice Foster wrote, and consequently to have been invariably the same.

Gentlemen, the act of parliament says, (for this is an indict-

ment upon the statute of 25th Edward III.) "When a man  
 " doth compass or imagine the death of our Lord the King, and  
 " thereof be provably attainted of open deed, by the people of  
 " his condition, he shall be adjudged guilty of Treason." This  
 is, shortly, the part of the statute which relates to the crime  
 in question, which I state to you distinctly, and separately from  
 the other Treasons, which are enacted by that statute, in order  
 that you may distinctly and clearly understand, that the only  
 question for you to try is, whether the person at the bar did,  
 upon the evidence, compass and imagine the death of the King :  
 —and whether he be thereof *provably* attainted of open deed.  
 Now, Gentlemen, this word *provably* has been upon all occa-  
 sions, a word extremely relied upon, in the construction of this  
 act of parliament. The meaning of that word has received a  
 most solemn, a most deliberate, and a most enlightened consi-  
 deration from a person greatly eminent in the law of this Coun-  
 try, from my Lord Chief Justice Coke; who, in his Commen-  
 tary upon this statute, says—" By provable is meant that it is  
 " upon direct and manifest proof, not upon conjecture or pre-  
 " sumptions, or inferences, or *strains of wit*, but upon good  
 " and sufficient proof; and herein the adverb provably hath a  
 " great force, and signifieth a direct plain proof, which word  
 " the parliament did use, for that the offence was so heinous,  
 " and so heavily, and severely punished as none other the like;  
 " and, therefore, the offender must provably be attainted, which  
 " words are as forcible as upon manifest and direct proof; note,  
 " the word is not *probably*, for then common argument would  
 " do, but the word is provably be attainted." Such is the  
 construction, such is the opinion laid down by Sir Edward Coke,  
 considering this statute, deliberately in his closet. A person  
 deeply acquainted with the principles of the law of England.  
 You see here that he makes a great deal to depend upon the  
 word provably: that he distinguishes most materially between  
 the word *provably*, and the word *probably*; and he says, that on  
 account of the severity of the punishment, and for the protection  
 of the prisoner, that the legislature meant that he must be at-  
 tainted *provably*, that is by manifest and direct proof.

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This commentary of this profound lawyer is now by common consent (and will be so stated to you from the Court) allowed to be the undoubted law of England—to be incorporated as completely in the Constitution and the law of the Country as any other maxim, any other principle, any other declaration of the common law whatever. Gentlemen, this, which was laid down by my Lord Chief Justice Coke in his closet—this, which has become (as I have had the honor of stating to you) the law of the Country—this, which is uniformly rested upon by Judges and by Juries, in all questions of Treasons, as the sound rule of construction and decision, was carried into effect, was realized, and acted upon, by another great luminary of the law, in a great and eminent prosecution, in the reign of James I.—not a prosecution for Treason, indeed, but a prosecution in which Sir Francis Bacon, to whom I allude, brings the doctrine directly home to the question of Treason: so that the same principle which is laid down by my Lord Coke privately in his closet, is adopted and acted upon in the public Court by my Lord Bacon, when he was Attorney General; at a time that he was addressing a Jury impannelled, as you are now, to try a prisoner indicted by the Crown.

My Lord Bacon, in the trial of Lord Somerfet, says, “ The King hath given us command that we should not expatiate or make invective, but materially pursue the evidence as it conduceth to the point in question; a matter that, though we are glad of so good a warrant, yet we should have done ourselves; for far be it from us, by *any strains of wit or art*, to seek to play at prizes, or to blazon our names in blood. We shall carry the lanthorn of justice (which is the evidence) before your eyes upright. I will speak somewhat of the greatness of the offence, not to weigh down the prisoner, but shew that a great offence needs a good proof, for the offence next unto High Treason is the greatest.”

In that case, my Lord Bacon was speaking in the trial of a person for murder, but you see he brings the whole doctrine home to the question of Treason: he observes, that the King had given it in command not to expatiate, or make invectives.

Gentlemen, the rules of modern times, and the practice of the Constitution now, admit of no such allusions; I am sure, however, if they had been permitted, the monarch under whose government we live—who considers his own life as sacred only for the benefit that it bestows upon the Society which he governs, would have given such a command, if, according to the usage of these times, it had been regular so to do. I am sure, at the same time, that I do no more than justice to my learned friend when I say, that such a command to him would have been unnecessary, for throughout all the opportunities that I have had of seeing his practice, in the eminent and difficult situation in which he stands, he has followed forth peculiarly, he has copied candidly and manfully, the doctrine laid down by my Lord Bacon.

Gentlemen, my Lord Bacon brings his doctrine home to Treason; he lays it down in a case of murder, but he says expressly that is the highest crime except Treason; he therefore does most undoubtedly bring the whole doctrine of my Lord Coke, with regard to the meaning of the word provably, home to that particular point of Treason; that is to say, he lays it down as a doctrine, that in a question where there is a prisoner at the bar tried for his life, whether it be a Treason, or whether it be murder, the evidence is not only to be carried upright, but he uses the very words of my Lord Coke, and says, that it is not meant by him to use strains of wit, or by art to seek to play prizes.

Gentlemen, having stated this to you, as the doctrine upon which this case must be determined—as the rule by which this evidence must be judged, I earnestly request of you to treasure it in your minds, for the purpose of applying it in the sequel of this case, when I shall have the honour of stating the evidence particularly to you; in the mean time, permit me to lay before you what the nature of this accusation is, tracing it from its source. Gentlemen, my learned friend, the Attorney General, has brought into your notice a person of the name of Upton, whom he has not been able to bring here to-day; about which I shall be under the necessity of saying a few words by-and-by.

The indictment itself, too, brings Upton to your notice ; and you have heard from the very best of all authority, (namely, from the authority of Mr. Attorney General himself,) that if Upton had been examined here, that he would have appeared to have been a person concerned in this crime, and discovering it to the Government of the Country. Such is the situation in which this person is represented. Gentlemen, I shall have occasion in the sequel most lamentably indeed to regret that that person has not been in a situation to be brought here. Upon the present occasion, I bring him to your notice merely for the purpose of calling your attention to the nature of the probabilities in which this case is founded ; and I think I shall be able to demonstrate to you, on the one hand, that the probabilities are all against the existence of such a conspiracy as is here stated, and that, on the other hand, there is no proof *provably given* sufficient to establish a contrary conclusion ; nor any to satisfy your minds that, in a case of blood, in a crime such as this indictment sets forth, there is any ground or foundation for you to rest a verdict of Guilty upon ; but that you will send the prisoner forth among his fellow-subjects, I trust, to pass the rest of his life in a conduct which will make it perfectly impossible even to impute to him any thing like that with which he now stands charged.

Gentlemen, I must call to your attention, upon this occasion, not only the particular character of Upton, but I must likewise state to you what is already proved in part by the cross-examination of the witnesses for the prosecution, by farther proof, direct and manifest, coming home to the very point, and to the very issue in question. I shall be enabled to lay before you evidence of the relative situation of animosity and hatred in which Upton stood with the persons with whom he is supposed to have conspired ; of whose actions he became, according to the case made by the Crown, first the accomplice, and afterwards the spy : I shall be able to prove, that Upton was in a situation of hostile discussion with Higgins, of enmity with Le Maitre, and of difference with Smith ; that there was not any thing like an intimacy, of acquaintance, or of confidence between him and



the prisoner at the bar; for you will recollect that you have it proved by incontestible testimony, that the prisoner had been but for a very short time indeed acquainted with Upton.

Now, if I can establish to you that he lived in direct enmity with Le Maitre, that his enmity had gone to such an extent that he had sent him a challenge to fight him, because Le Maitre had accused him of crimes of a deep die, and that Le Maitre had not given him that satisfaction which perhaps it might be contended (though I think it hardly could be in a Court of justice, whatever the laws of honour may falsely lay down) lays all revenge to rest. If I prove to you, what has not been denied by some of the witnesses for the prosecution, his enmity to Higgins, and that in fact an enquiry was commenced with great form, and carried on with great diligence, that had for its object the discovery of Upton's crimes, and his expulsion from the Society, where, if he was not an active member, at least he was a spy, who might expect to receive emolument. I ask whether the probability is not strong against the existence of such a conspiracy?—whether you can suppose conspirators not only not intimately acquainted, but hardly acquainted at all?—whether you can suppose conspirators living in a state of direct enmity with each other?—whether you can suppose the confidence of conspiracy to exist where enquiry is carrying on which must lead to the exposure, expulsion, and final destruction of the very man who was the discoverer and the accomplice? I ask you whether it is possible that such a proposition can, consistently with the common rules of human action, gain belief? I prove these things incontestibly, and I pledge myself to prove them: I then call upon you for this necessary conclusion, that the grand foundation, the principal ground-work of this great crime, the probability of its existence, is destroyed, annihilated, abolished, and done away: that consequently, when the foundation is gone, the superstructure must fall; and all that my learned friend has built upon it, and all that he wishes to have you infer from the evidence which he has given, and every circumstance which he wishes you to note as inferring guilt upon the unfortunate person at the bar, turns directly the other way. Then it is I call upon you to apply the doctrine

doctrine which I have shewn to be the law of Lord Coke and Lord Bacon—Here, I say, you must have manifest proof—Here you must not decide according to *strains of wit*—Here you must see that the lanthorn of justice (the evidence) is carried clearly before your eyes. I know that I am addressing myself to twelve persons who have feelings—who have integrity—who have intelligence—who have discernment to possess every quality that can belong to the sacred and important function in which they are engaged; I am confident, therefore, that if I establish in proof what I here state myself able to prove, I shall do away in their minds all idea of the existence of this conspiracy, and consequently every thing that is founded and built upon this conspiracy.

Gentlemen, this is not all, this relates only to the improbability of such a conspiracy having been contrived by these jarring, hostile, unacquainted conspirators; I now request your attention to the probability of such a contrivance, coming from Upton. That man, who has not appeared before you—What was his situation? His conduct was enquired into for crimes of the deepest dye; his enmity will be proved by messages of the most hostile nature; the whole tenor of his life will hold forth a man who, if he had appeared in that witness-box, you would have shrunk back from with horror. These, then, are the considerations—What was the situation of this man?—what was the particular time in which he spoke?—what is the peculiar turn (as the history of all ages have proved it) of men of that description in such times and in such situation? The man, such as I have described him, had no means of rescuing himself from obloquy but by the fabrication of a plot. He determined, therefore, to turn what he had invented; God Almighty knows for what purpose he might have invented it; he was capable of using it for the vilest purposes, and was equally capable of turning it to any other purpose that might suit his interest or gratify his revenge at the moment. Such is the situation in which Upton stands; and therefore I establish not only the improbability of the conspiracy existing, on account of the state of the parties,

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on one hand, but I establish a manifest, a clear, and distinct probability of Upton contriving it on the other.

Gentlemen, what was the state of the times? Is it possible for any men who love their Country to forget the alarm which spread throughout the nation, which seemed at once to take possession of all ranks and descriptions of men? It was in the midst of that alarm that this plot was contrived; nay, not only so, but it was contrived at a most particular æra of that alarm. You will recollect, (I am sure my Lord will recollect) that there was a time when convictions had taken place in a northern part of this Country of persons tried for High Treason; they were tried upon the ground that there had been a conspiracy against the Government of the Country, to destroy this Country, and, by inference, aiming at the life of the Sovereign: these persons, Gentlemen, were convicted. There were trials in this Country, where persons were tried for the same crime, and those persons were acquitted. Gentlemen, I bring nothing into a Court of Justice but the duties of an advocate; I make no observation upon the convictions in one Country, nor upon the acquittals in the other; I state the fact for this material purpose. In the intervening time, when the alarm had taken possession of mens minds, which had been raised to a considerable height by the proof of the existence of that in which the alarm was founded, owing to the convictions in Scotland, before the Grand Jury were impannelled in England, but not before the commission was issued, to try the Treasons—before the acquittals, which tended to relieve mens minds in this Country from the ground and foundation of that alarm, just in that intermediate time, at that particular moment, was this plot brought forward by Upton, was this discovery made; and till that time it never had an existence.

Such was the peculiar time at which this discovery was made: but mark the coincidence of circumstances. That very time which will be proved to you to have been the time of accusation, will be proved to you to have been near immediately posterior to the time of the challenge—it will be proved to you to have been  
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the time when Upton was roused, not only for his personal defence and safety, but from every other motive, to make the accusation. Why then I have got, upon the present occasion, three things which establish, according to all human probability, and we are to judge of human actions according to the nature of human kind—I have got three grounds, all of which evince that there was the strongest probability that this man invented this plot for his own purposes: I have his personal safety—I have his revenge—I have the particular circumstances of the times, exciting him to it, at once encouraging him and protecting him; and then I have, in addition to that, the hope of reward. Now I desire that you will examine all these different motives, I desire that you will carry them in your minds, I anxiously entreat you to consider what the nature of them is, and I am sure you will find, that although they are different motives, that they are not only concurring motives, but that they are motives which can exist in the same breast at the same time. There is nothing inconsistent in a person being urged at once by personal safety, by the love of revenge, and by the hope of reward, in order to bring to punishment persons who he knew were perfectly and completely innocent of any thing that tended to turn them to the malicious—to the wicked purpose to which the evidence given for the prosecution (which I am by-and-by to examine into) attempts to turn it. This is not all. What was the temper of mind at that period? How well was the society in which we live calculated at that time to encourage a miscreant to bring forward into action such a contrivance?

In addressing myself to you, I am not speaking to persons who are ignorant of the history of their Country, and of the history of mankind; I am speaking to intelligent men, capable of judging of this case in all its views, and under all its circumstances. And I believe the history of the world does not furnish an instance of a period of strong alarm and apprehension, laying hold of the public mind, without begetting persons of the character of Upton, and without those persons taking advantage of the times, in order to answer their own wicked purposes. Gentlemen, I will not lead you out of the history of your own Country;

try; but I am sure I say nothing that has not a direct analogy and bearing upon this cause, when I call upon you to reflect upon the history of the last century—when I call upon you to attend to the sentiments of a most eloquent and philosophic historian, whose ideas I will quote in the very words which he uses when this Country was alarmed in 1670 at the idea of a popish plot. There sprung up at that time, and during that alarm, persons precisely answering to the description of this abandoned informer. Instead of giving my own opinions and sentiments upon the subject, I have recourse to that profound observer on human nature Mr. Hume. His description of that awful period I am sure you will all realize in your own minds. I am sure you cannot have been without apprehensions of the same kind, and I am not afraid of bringing those apprehensions back to your minds, because I know the honesty of your natures will not permit you to let those apprehensions operate to the prisoner's prejudice, unless you see it clear and manifest that these probabilities are provably established to have any foundation in reality. The historian says of that time, talking of this Country at the period of the Popish Plot—" They thought " their enemies were in their bosom, and had actually got possession of their Country. Each breath and rumour made the " people start with anxiety. Like men affrighted and in the " dark, they took every figure for a spectre. The terror of " each man became a source of terror to another, and an universal panic being diffused, *reason and common sense, and common humanity, lost all influence over them.*"

Gentlemen, such is the situation of the public mind upon all similar occasions. The first part of that description paints that which gave this abandoned man hopes of the success of his measures. The latter part of it, I know, does not paint the character of the present times. Thank God! the judicial improvements of this Country since that period. The integrity of the Judges. The enlightened minds of Juries. The capacity of distinguishing between guilt and innocence. The openness to receive information. The abandoning all ideas of judging upon any facts or impressions, except those arising in the single cause in question.

question. The never coming into Court, but with an idea of the cause; nor going out of the Court to deliberate upon the verdict, but with an idea of the cause, and the cause only. The throwing behind all prejudices of every sort, even the nearest and the most forcible upon the human mind, form, happily form, the judicial character of the present times. Unfortunately it was not so, at the time of which the Historian speaks. Juries were not so constituted, Courts of Justice were not so regulated. The annals of that time, certainly do not concord with the annals of the present period. This, thank God, is a bright æra for the history of English jurisprudence, and the judicial purity of Jurymen. Therefore, Gentlemen, though I quote to you, for the purpose of shewing you, that such is the disposition of mens minds. For the purpose of establishing to you, that here is an instance, by which people would be induced to do what this wicked and abandoned man has done. I know, perfectly, that the concluding part is inapplicable to the present times, and that I am as safe in your hands, the prisoner, for whom I plead, is as safe in your hands, as if no similar alarm had taken place at the period when this plot was contrived. I know, perfectly well, that you will banish all such thoughts and ideas, and consider the mere question of guilty or not guilty, upon the probabilities on the one hand, and upon the proof on the other.

Gentlemen, I have now, I believe, gone through every circumstance that relates to the original history of this case; to the situation and character of Upton; to the probability of there being no such plot, because the conspirators were totally unacquainted with each other, and were at enmity with each other; to the probability of such a plot, upon that account; and to the probability of their being such a contrivance as that, with which I charge Upton as the contriver. It is now my duty to bring you to the particular evidence in the cause, and to call your attention to that evidence, in the different points of view in which it appears to me. And, Gentlemen, I hope to do so without being tedious; at the same time, as this is the important part of the cause, and as we are all engaged in the most solemn and important duty here, I do most anxiously entreat your patience; I am sure



my Lord, and I am sure you will pardon me, if in the discharge of a duty of this sort, I should rather be prolix, than run the risk of leaving any thing unsaid, that may be for the benefit of the prisoner.

Gentlemen, the witnesses upon this occasion are of two sorts, one set of witnesses were brought to prove that an instrument (such as is described in the Indictment) was prepared; another set of witnesses were brought to prove that that instrument was meant to be used for the particular purpose laid in the indictment; you will observe, that these two sets of witnesses are of a very different nature, that they speak to facts of a very different sort; the one set of witnesses, those who prove the instrument, speak to facts that passed before their eyes, but with regard to any use of the instrument, with regard to any colour given as to the purpose for which that instrument was prepared, or any application of that instrument, they speak to no fact whatever, which tends in the smallest degree to establish any thing like an application; the other witnesses speak merely to declarations, so that you will observe that upon this case, the evidence of fact only establishes the making of a particular instrument, how far these facts bring it home to the prisoner, is a question for you to try, and for me to discuss; but the evidence of confession therefore, or the evidence of declaration, is the evidence that tends to establish the use of it.

Instead of examining the evidence in the order in which it was called, I will take the liberty of classing the witnesses according to the different nature of their testimony, for the purpose of applying their evidence particularly to these two distinct modes of proof; because different observations, different rules of probability, and different principles, apply to the one set of witnesses, and the other owing to the nature of the subject so proved being different, and owing to the different mode by which the question is proved. Gentlemen, the first witness who is called to you, is a person of the name of Dowding, that person you will recollect, did not speak of any thing particularly; being prepared, he did not speak at all to the prisoner at the bar, he only said that three persons came, and he said that Upton was the principal spokesman, and he particularly said, when it was mentioned

tioned that it was a secret, Upton was the person who said it was a secret; but you observe, that this person likewise stated a very material fact; he stated, that they haggled and talked about the price; now I would wish to call your attention coolly and deliberately to that fact; mark what the nature of the charge is, an important and a terrible charge, (if it is a true one) but on which must be bottomed, in a design which has some view and object, and have for its foundation something more than four obscure individuals meeting at a blind alehouse, for the purpose of contriving this extraordinary plot; yet no evidence whatever is given to you, that any individuals upon this Indictment, upon this trial, that is that any individuals at all were concerned in it, but the prisoner and Upton; if the prisoner was concerned in it. Such is the nature of the subject which they were supposed to be talking to Dowding about; what does Dowding say, he says they haggled about the price, now I ask you as judges of human nature, I ask you as men capable of understanding the nature of man, and of weighing the import of human actions and of human conduct; whether it is a natural thing, that persons carrying such a plot as this, a plot going to such an extent, a plot founded necessarily on such a bottom, a plot connected with such circumstances, that they could be in a situation to think of the price of a miserable metal tube, or that a few shillings one way, or a few shillings the other, could be at all an object; that circumstance, and that fact, in my opinion, tend to establish a strong negative to the possibility of there being any such thing existing in the minds of these people, as that which is attempted to be proved: but you observe that Dowding proves nothing done, and there is an end of my observation upon Dowding's evidence.

The next person produced is Bland, by his evidence you observe that nothing is proved to be done, only two were present at that conversation, Palmer remained behind, and Palmer accounted to you in his evidence why he remained behind, they were there for a very short time, while Mr. Palmer remained behind at the corner of a street from a necessity of nature, when that was over he called at the house, and it appears that he was back again into the street from the house and overtook them;  
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consequently the conversation could not have lasted, according to the common course of nature, above a very few moments, but Palmer was not present there.

Now, Palmer is supposed to have been a person concerned in this plot, Palmer as well as Upton is supposed to have been cognizant of and acquainted with the particular object and design that the prisoner is charged with; is it not a most extraordinary thing—is it not contrary to all probabilities—is it not contrary to the course of nature, is it not contrary to the common conduct of man—that in a scheme of this kind, which was bottomed in an intent to take away the life of the King; (that terrible and dreadful act that one can hardly mention without shuddering) which must have been bottomed in an intention to overturn the state; must be done in connection with people and with powers, who were anxious that this scheme should be carried into execution. That the conspirators in that very scheme; that Mr. Palmer, a person ushered in by the Attorney General in his opening speech, and examined by Mr. Garrow as if he had been a witness of mine, and under cross-examination, and not a witness examined in chief. That of these conspirators, Palmer was so little attentive to the object of this conspiracy, that he staid behind for the reason given; that he should not know to what place they were bent next, and that when he did not find them in the house, it was only by seeing them in the street and overtaking them, that he found his way to the place where they next went.

I would wish you next to attend to the evidence of Cuthbert—Cuthbert, you observe, is a person who makes instruments, and particularly makes air instruments; he spoke to an air-pump; Cuthbert has nothing to do with the making of this instrument, he has nothing to do with this supposed conspiracy; Cuthbert does not give any proof whatever, of the fact of fabricating the machine, none whatever. But he states to you, that Upton being a watch-maker, and he having occasion to go to Upton for a particular purpose; namely, to pay him money, which was to be paid over to the wives and children of the persons who were confined in Newgate, for the Treasons that were formerly tried; he invited Upton to come to his house to see some of his machinery.



chinery. He says, that he soon discovered Upton to be a disagreeable person; that when Upton called the second time he took little notice of him, that he sat upon his seat all the time; but he establishes this important fact, that Upton and the person who came with him, appear to have been most completely ignorant of every thing with regard to the power of air; he proves, at the same time, that they did not go there with the intent of learning what the power of air was. He negatives that intent expressly; because he establishes this fact, that Upton went in consequence of the particular invitation given him by him Cuthbert; such is the nature of the evidence. Then I say we have now proved conspirators contriving a machine of destruction, who were ignorant of the very principles of the machine which they were to use; we have conspirators going to the shop of a mechanic, not with a view to learn the principle upon which this machine was to be constructed, but going upon the particular invitation of the person, as a matter of curiosity. Here is another observation which I am sure you will make, when you come to consider whether this case is proved provably or not; but Cuthbert's testimony is produced merely for the particular purpose of giving colour to their speculation, and it proves their ignorance without proving that Crossfield was one of the two; it does not go to the main, and the particular question of the fabrication of the machine.

Gentlemen, as I am now upon the testimony of this witness, I will state one other circumstance; which is that, he said, that he was attending at the Privy Council (and this he said in answer to a question of my learned friend on the other side the table who examined him) he said, that there was one Dennis there, and that he did not know the prisoner, he had not the least idea of him, he only knew that a person came in a particular situation, and could not tell whether the prisoner was in that particular situation or not; but he says, that Dennis was there at the Privy Council, when a person, whom Dennis called Crossfield, walked through the same room, and then he said with great anger, "there he goes," the witness asked who, Dennis said "Crossfield, damn him, I should know him if it were his ashes burnt."

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I come now to the evidence of Joseph Flint, there again there was a short conversation, there was nothing done, and he speaks positively to the lame man being the spokesman, and does not identify the prisoner; nor does he state that any thing was done of any sort or kind.

Gentlemen, the next witness to whom I shall call your attention, is Mr. Palmer; my learned friend the Attorney General in opening, (and certainly the manner in which that witness was treated corresponded exactly with his opening) stated that he might be under the necessity of calling some witnesses who stood in a particular situation and connection; and therefore it might be difficult to obtain the truth from them. There fell an observation in the examination of that witness, which I am sure must have made an impression upon your minds, from the height from which it fell, (Lord Chief Justice Eyre); it was this, that the Crown cannot discredit their own witnesses in any thing, without losing the benefit of that witness. What Palmer is, or any thing respecting him, I certainly have nothing to do with; I will state what he proved, and such observations as occur to me upon what he proved.

You will observe, in the first place, that Palmer ascertained this fact without leaving any doubt upon the mind of any man who heard him, when he ascertained it; he ascertained that Mr. Crossfield's personal acquaintance with Upton was of very short duration, he could not even state it to extend to a month. Therefore, you will recollect that that fact is one of those which I call to my aid, in that part of the case, on which I have already addressed you; namely, the improbability of persons standing in that relative situation, conspiring together for such a purpose as this; for surely if any thing requires mutual confidence, it is a conspiracy; and if any conspiracy requires mutual confidence, it is the peculiar conspiracy that is now the subject of investigation. Palmer likewise establishes another thing very material as to this design, and establishes it without leaving a doubt; he establishes that they dined that day in the neighbourhood of Temple Bar; that it was mere accident that led them to Upton, that he went there for the purpose of having a watch repaired, and that they walked

walked with Upton into the city; that in short, this, so far from appearing to be any thing like a design, it was a mere accidental meeting. He then states to you the various circumstances with respect to their going from place to place, but he can give no particular account of what passed upon that occasion; and as far as he goes, there certainly is not any colour to say that the thing which was prepared, was either ordered by the prisoner, that he had any hand in the ordering of it, that he was any thing more than an accidental companion of Upton, upon the occasion; there is not the least ground for a conclusion of a guilty design. With regard to the particular use and intention of the instrument, he says nothing that could lead to a conclusion that it was made with the view and the intention laid in the indictment; Mr. Palmer likewise proves to you the state of Mr. Crossfield's health; the state of Mr. Crossfield's circumstances; and he likewise proves to you the situation in which Mr. Crossfield was, before this conspiracy is supposed to have taken place, before the discovery at least; and the situation in which he was afterwards, to the time of his leaving England. With regard to those last mentioned particulars of Palmer's evidence, I shall pass them over at present, because they apply more properly to another part of the case, which is most material for your consideration; namely, the demeanour of the prisoner at the bar, throughout the whole of this transaction. I wish, however, before I go on, to call your attention particularly to dates, because dates may be of great importance; I would wish you at present to observe, that Mr. Ward said, he first went to Mr. Pitt upon Saturday the 12th of September, that he saw him on Wednesday the 16th of September; it will be proved Le Maitre and Higgins were apprehended the 27th of September; that Smith was apprehended the 28th; and it will be proved that the advertisement for a reward for the seizing of Mr. Crossfield, was not till late in the month of February. Gentlemen, I desire you at present to attend to these dates, because in the sequel of what I have to address to you, I shall be under the necessity of making observations of some considerable importance with regard to them.

I now come to the evidence of Thomas Hill; you will recol-



lect he was the person employed to make the model in wood—you will observe, that throughout the whole of Hill's evidence Upton too is the person who orders; that Upton is the person who said he should be paid; that Upton's is the house to which he carried it; that Upton is the person to whom he applied for payment; and you will recollect, likewise, that he had no knowledge whatever of the prisoner. That the prisoner did not interfere in the business at all, except with respect to some directions in aiding Upton when he was giving the description; but he did not seem to take any particular part in it. You will observe, likewise, (for I am sure I state the evidence fairly, and I state it correctly) that all that he said upon that occasion was, that the stranger might do something; but he spoke from a faint recollection.

If Hill has proved any thing, he has only proved the existence of a thing, he has not proved the use of it, or the application of it—so little has he proved the use of it, that a scientific man, who wished to shew us last night an ostentatious sample of his scientific knowledge unnecessary for the occasion, Mr. Mortimer, told you expressly, that if he had been asked, without describing them, it would have been impossible for him to have told what these models were for.

*Lord Chief Justice Eyre.* You misapprehend the evidence there, and making observations upon the evidence not founded in the fact, is injurious to your cause.

*Mr. Adam.* I do not mean to misapprehend the evidence.

*Lord Chief Justice Eyre.* He did not say, that he could not have known the use of the models; but said, he could not have known that these models were prepared from those drawings.

*Mr. Adam.* I am excessively obliged to your Lordship most undoubtedly. I asked him, upon cross-examination, shewing him the roller, if he could have known, from looking upon that roller, for what purpose it was intended—I think his answer was, he could not.

*Lord Chief Justice Eyre.* You misapprehend him—he said, he believed it was for a piston for an air-gun, that taken together, with finding the tube, it was satisfactory to him that it

was so, but without finding the tube it was not so satisfactory, but that that was his opinion—what he said with regard to not knowing it was, the drawing was so bad, he should not have known that the model was prepared from the drawing, unless he had been told that they had had conversation upon the subject.

*Mr. Adam.* You have heard from my Lord the evidence to which I was alluding, with respect to Mr. Mortimer, and the observation I have to make upon it, as applicable to the evidence of Hill is this—that Hill undoubtedly, from Mr. Mortimer's evidence, could not conclude any thing as to the use of the instrument, Hill being an ignorant man. Consequently all that appears from Hill's evidence is this, that a thing was made, and you will recollect because it is important in the sequel of what I have to address to you; and in your consideration of the sequel of the cause, you will recollect that Hill as far, I think, as I am able to trace the evidence, is the only person who speaks to the actual fabrication, or who ascertains the actual making of any part of the instrument laid in the indictment—I mean with this distinction, the distinction of general confessions, upon which I shall observe hereafter.

Gentlemen, the next witness, is not the witness next in order, whose evidence I shall call to your attention, it is the evidence of Mrs. Upton, and upon the present occasion I wish merely to state this—Mrs. Upton was particularly called in order to prove her husband's death, but no doubt she was examined to some other circumstances, and to the circumstance of some of the things produced having been in the house of Upton; and you will recollect that she could swear to none of them but the models; that she could not swear to the drawings, nor to the tube, consequently she swears only to these models being there.

Gentlemen, with regard to her evidence, as to her husband, that I shall have occasion to observe upon by and by, when I come to state the evidence which I shall be under the necessity of laying before you. I shall, therefore, reserve that part of her evidence, to that part of the case.

And now I beg leave shortly to refer to the evidence of Steers and Pusey, who were called in order to shew that Upton had

something which was like the tube, for that was all that it could amount to; that was all that was seen at the meeting of the Corresponding Society. Now, whether it was or was not the tube, upon the view which I take of this case, is a matter of no consequence. I bottom myself throughout in the malignity and wickedness of Upton's character; and on his character, combined with facts and circumstances, I assert, that he might have contrived such an instrument for a wicked purpose, and might afterwards convert it to the injury of others, and the gratification of his own revenge. As long as I found my case upon that principle, I contend that it is a matter indifferent to me, as standing for the prisoner, whether this was proved positively, or was proved as it was, in fact, doubtfully. It does not come home to the prisoner, he was not at the Corresponding Society upon the occasion; it does not come home to the Corresponding Society, not one of them is accused, nor is the Society supposed to be concerned in this conspiracy. It does not come home to one of the individuals charged in this indictment, for not one of them is stated to be present upon that occasion. In short, it is a story which relates distinctly and simply to Upton, which belongs to his wickedness, which belongs to his malignity, which is bottomed in the advantage he thought to take of those he conceived to be his enemies. The tube is cunningly and secretly shewn by him to raise suspicion; not openly produced, but peeping from under his coat. The very mode which a false accuser would adopt. Therefore, I contend, that every thing which is to be drawn from the doubtful evidence of these persons, with regard to the existence of this particular thing, and what it was (for my Lord examined them particularly to what it was, and they said they rather believed it to be a tube, but could not speak certainly to it), is evidence, that can have no weight in this case, as far as it regards the prisoner at the bar.—But that it proves Upton had some black intention.

I come now to the evidence of Mr. Ward, and it was merely to prove, that he was informed by Upton, and he informed his Majesty's Ministers, and that in consequence of it the persons were committed at a subsequent time. You will always observe,  
however,



however, something singular in this case, that the information was given upon the 12th, that it was not communicated undoubtedly, as appears, till the 16th, but that there was no apprehension of any of the parties till the 27th; and that there was no advertisement of the prisoner till the end of February; and I contend that that last fact, is a most important fact in this case, because it shews, that whatever the diabolical intentions of Upton might have been; that whatever the circumstances of the case might have been, at that time; that at least they had not an idea that there was evidence laid before them, at that time in order to take up the prisoner. Therefore, when I come to examine the circumstance of his demeanour, after the apprehension of the three other prisoners, you will always bear this in your mind, that no ground of suspicion of that man can be proved to have existed, until such time as his Majesty's Ministers did their duty by advertizing a reward for his apprehension.

Gentlemen, on the review of all this evidence I wish to draw your attention to what is proved, with regard to what may be called the *instrumentary* part of the testimony; that is to say, the fabrication of the instrument, and, I think, you must necessarily agree with me, that with respect to the fabrication there is but one witness, who speaks positively to it, and that that one witness speaks only to a small part of it, the model. He does not speak at all to the use, or to the purpose of it, nor do any other of the *instrumentary* witnesses. The single witness who speaks to it, I say, is Hill, for with regard to the fabrication of the other part, with regard to the fabrication of the arms, to which I shall come by and by, which forms a most essential part of the ingredient in this case; because without it the means was not complete to the end. I say, that that rests entirely upon that part of the evidence to which I am now about to come, namely, the confessional evidence, the prisoner's declarations. Upon that part of the case I conjure your attention—I shall endeavour to impress it strongly upon your minds, because I am strongly impressed with it myself. The nature of confessional evidence, or evidence of declaration such as this,

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is to be well weighed in a question of any sort. In a question of this particular nature, where the overt act of fabrication rests on the testimony of one witness only, I shall contend, and I think successfully, that it is not at all to be credited; and that it is impossible for grave, serious, intelligent men, like you, laying your hands upon your hearts, in solemn judgment upon the life of that unfortunate person, to say, that there is that clear, distinct, manifest evidence which, according to my Lord Coke and Lord Bacon, amounts to proving an overt act of Treason *provably*; for you are not, as Lord Coke tells you, to deal in probabilities, you are not to deal in conjecture, but you are to say to yourselves, in the solemn moment of deliberation, do or do not these facts prove *provably, manifestly, and incontestibly*, the guilt of the prisoner at the bar.

Gentlemen, I am extremely sorry, I am sure, to delay you so long; but, at the same time, I am perfectly conscious that you will be satisfied that I do it from a sense of my duty, and that I do it from an opinion that it is most essentially necessary to the interests of my client that this case should be thoroughly understood. I do not mean to shun any part of the case; I do not mean, I am sure, to state the evidence otherwise than it was given; and I am extremely grateful for having myself corrected when it does happen that, from the variety of the facts, that I am under the necessity of carrying in my mind upon an occasion of this kind, I have gone on in any thing that is not a correct apprehension of the manner in which the fact was proved.

Upon the confessional evidence, or the evidence of the declarations of the prisoner, you will observe, that there were four witnesses, Le Bretton, Dennis, Winter, and Penny; these were the four witnesses to prove the declarations of the prisoner. Permit me, again and again, to observe, that evidence of declaration is of a very singular sort; I am sure I do not say any thing in which I shall be contradicted by any authority in this Court, when I say, that it is to be taken with great consideration before it is admitted to prove the fact.

Gentlemen, I have already called your attention to the im-  
portant

portant and significant words in the statute. I have read to you the commentary of Sir Edward Coke, of almost equal authority with the text: you find with what anxious solicitude he distinguishes between the words probably and provably. Unless we accuse that great lawyer of vague, unmeaning expressions, we must affix a precise sense and meaning to the word on which he dwells with so much force: he must mean the highest evidence of which the nature of the thing is capable; he must mean that which is termed legal demonstration, such demonstration as parol testimony affords. Now I wish to present correctly to your minds the nature of such demonstration: it amounts to this—that if the witness speaks truth, the fact to which he speaks must be true. For example, in a case of High Treason, it is proved that such a person has been out in rebellion against the Sovereign; all that is proved provably—it is proved according to the idea of legal demonstration; because if the witness speaks truth, the fact must be true. But when evidence is given to a confession, observe what the nature of it is: the person who gives the testimony may speak truly, and yet the fact may not be true; because the fact does not depend merely upon the statement of the witness, it depends upon the statement of another person, who has stated the thing to the witness. Therefore, that principle introduces a great doubt—introduces a necessity to receive with great deliberation, even amounting to hesitation, all evidence with regard to confession.

But, Gentlemen, this goes much further, and is not founded in any abstract principle of law—not in any difficult conception, or abstract train of reasoning; it is founded in the very nature of things. Confessional evidence is such, that not only the person who makes the confession must be clear from all motives either of hope or of fear, but his mind must be a mind so tinctured, so prepared, that you shall believe correctly and accurately what he confesses to be true. The person making the declaration must not be led by hope, on the one hand, or fear on the other, to state circumstances that may make in his favour. But, on the other hand, the mind which is to receive the confession—the person to whom it is made, must have an accurate, distinct mind,  
capable

capable of carrying it away; to report faithfully, without exaggeration or misrepresentation. You will observe, too, in all evidence of confession, the nature of it is such, that it is next to impossible to prefer an indictment for perjury. How is it that witnesses are secured to speak the truth? what does the law say upon the subject by its regulations? for that is the mode of considering the question. The law says, they shall come here under the terror of a penal prosecution if they do not speak the truth. A witness who comes to speak to a confession, comes to speak to that which, from the very nature of it, cannot be *negatived*; because it is impossible for any person to say a person did not say such or such a thing, all he can say is, *negatively*, that he did not hear it; consequently the person who speaks to the declaration, speaks without those risks of penal proceeding: he is safe from the restraints and terrors of the law.

Gentlemen, if you apply that to the present case, observe how strong it is; see what the nature of the question is which you have to try. It is a question of intention; that is, it is a question whether an instrument, innocent in itself, perhaps meant for the purposes of experiment, perhaps not—whether an instrument, innocent in itself, was or was not prepared for a particular purpose. Now I beg you will observe upon what the purpose rests;—it rests merely in confession. What is the indictment?—an indictment for High Treason; where the intention of the party is to be taken for the fact. The intention, in this case, to be taken for the actual killing, is to be established and proved not by any thing which necessarily arises out of the fact, but a thing, innocent in its nature, is to receive colour from different and distinct testimony—from the mere fabrication; so that even in the case, taken simply and independent of confession, it is almost impossible to indict for perjury; nay, I might say, it is absolutely impossible to indict for perjury. How then does the case stand upon the present occasion? The case against the prisoner is of this sort:—that he is indicted for High Treason; that the High Treason consists in forming a machine for a particular purpose; that one witness only speaks to a particular part of the model of that machine being actually formed.—All this is innocent: the  
only



only colour that is given to it is through the medium of the declaration of the prisoner, so as to render it guilty. Here then are two points: intention, to be proved distinctly from the act, which is not in its nature indictable for perjury; and that intention proved by words spoken by verbal declarations and confessions, which are not in their nature indictable for perjury.—Here, then, are two securities to a false witness; and two safeguards, removed from the accused, and both occurring in the case of that unfortunate gentleman.

Now, Gentlemen, there is another observation material for your consideration, equally founded in plain principles. We all know how very liable men are to exaggerate a story: we all know perfectly well how difficult it is for a story to be twice told exactly in the same words: confession or declaration is a mere story told. If the confession relates to a particular, distinct, substantive fact, perhaps the witness may be able to bear it in his memory; but even then it will be very difficult to contradict it by negative testimony: if the confession relates to something more intricate than a particular fact, it is sure never to be repeated twice without some variation; every day's experience, on every common report, illustrates this doctrine.

Gentlemen, there is a great difference in confession, according to the subject matter to which it is applied. If confession is applied to common and ordinary occurrences, in which the mind of man is not much interested—in which his propensity to exaggeration (that natural bias of the human mind) is not necessarily excited, an attentive listener may be a correct reporter. But consider how different this case is: here is a confession, relating to what?—relating to High Treason; that is a thing which lays strong hold of the human mind: here is a narrative relating to a great personage, the first and the best person in his dominions; upon whose existence the safety of the society in which we live depends; whose life, if violently and suddenly taken away by traitors, there must ensue something dreadful and calamitous to the state—a monarch, who has displayed every virtue during a long reign, and who lives in the hearts of a free people. What subject so likely to fire the imagination, and to lead to the  
excess

excess of those failings which are incident to the nature of man!

Consider, too, that the prisoner at that time (for I shall have occasion to speak hereafter of his demeanour) was in a situation where he might be flattered with a hope that particular circumstances might be advantageous to him, that he might hope to alleviate that captivity into which he had fallen. Let me entreat you principally to apply your minds to the doctrines I have laid down with regard to evidence of confession; I assure you, Gentlemen, that I feel this so deeply impressed upon my own mind, I feel it so much a part of my duty to be well founded in these topics, that I am anxious to carry you beyond the authority of the Counsel for the prisoner. I am desirous to follow the example of my learned friend, the Attorney General, and to shew you from grave, legal authority—not the speech of an advocate, but the deliberate lucubrations of judges, of the wisest and best lawyers that ever dispensed justice in this Country—that my principles are correct.

The first person I shall quote upon the present occasion is Mr. Justice Blackstone; who in his fourth volume, in which he professedly treats of crimes, states, with regard to confession—  
 “ But hasty, unguarded confessions, made to persons having no  
 “ authority, ought not to be admitted as evidence under this  
 “ statute:” he is there talking of the statute in question, and I do not apply it to you now with regard to the question of admissibility or inadmissibility. The evidence is undoubtedly admitted under the first of all authority—the judge who presides here. But I apply it as it regards the credibility attached to the evidence, and not with regard to the admissibility.

Mr. Justice Blackstone, on the same topic, goes on to say—  
 “ But hasty, unguarded confessions, made to persons having no  
 “ authority, ought not to be admitted as evidence under this  
 “ statute; and, indeed, even in cases of felony, at the common  
 “ law, *they are the weakest and most suspicious of all testimony;*  
 “ ever liable to be obtained by artifice, false hopes, promises of  
 “ favour, or menaces; seldom remembered accurately, or re-  
 “ ported

“ported with due precision; and incapable, in their nature, of  
“being disproved by other negative evidence.”

Gentlemen, it has lately been laid down in the very place in which I am speaking, from very high authority, exactly in the same manner. In Mr. Leach's edition of Hawkin's Pleas of the Crown, O. B. 1786—“A confession, whether made on official  
“examination, or in discourse with private persons, which is  
“obtained either by the flattery of hope or the impressions of  
“fear, is not admissible evidence.”

Gentlemen, I do not now contend, as I have stated, for the inadmissibility of the evidence, I am only shewing you that lawyers of great eminence have laid down the doctrine with regard to admissible or inadmissible, I am laying down rules to you, who are to weigh the credit of the testimony; and I contend, that every argument as to the credit must apply where there is a question about the admissibility or inadmissibility of the evidence.

I come now, last of all, to the authority relied upon by the Attorney General.

Mr. Justice Foster says—“Words are transient and fleeting as the wind; they are frequently the effect of sudden  
“transport, easily misunderstood, and often misreported.” He, upon this occasion, is talking of words with another view; not whether words are to be considered as treasonable or not treasonable, merely words spoken; when he uses the marked expressions to which I have referred. Now if words used in conversation are of that nature, all confessional evidence, all declaration is exactly of the same nature; because all declaration consists in words. But upon the present occasion, the declaration consists in words extending to a considerable length, it consists in the precision and accuracy of these words; and I contend, therefore, that the doctrine applicable to words, as laid down here, to be easily misunderstood, and often misreported, is applicable to all declarations and confessions of every sort. But, Gentlemen, in another part of this most excellent book, he lays down the principle correctly and accurately, in a very few words, which I am afraid I have been very feebly able to  
illustrate



illustrate and to enforce upon your minds. In the case of Willis, tried for High Treason, it occurred to consider whether a confession is evidence proper to be left to a jury or not, under particular circumstances, which I may have occasion by-and-by to state. Mr. Justice Foster, after discussing that case, which it is unnecessary for me to trouble you with at present, says—"The reader sees that opinions have been various touching the sufficiency of this sort of evidence, that is, the admissibility of confessions; but perhaps it may be now too late to controvert the authority of the opinion in 1716, warranted as it hath been by the later precedents; all I insist on is, that the rule should never be carried further than that case warranteth—never further than *to a confession made during the solemnity of an examination before a magistrate, or a person having authority to take it, when the party may be presumed to be properly upon his guard, and apprized of the danger in which he standeth*, which was an ingredient in the case of Francia and of Gregg, cited in the argument in Francia's case." He then goes on to give the reason, and he gives it in his simple and eloquent manner—"For hasty confessions, made to persons having no authority to examine, are the weakest and most suspicious of all evidence; proof may be too easily procured." I beg, Gentlemen, you will mark the words—"Words are often misreported; whether through ignorance, inattention, or malice, it mattereth not to the defendant, he is equally affected in either case, and they are extremely liable to misconstruction; and withal this evidence is not, in the ordinary course of things, to be disproved by that sort of negative evidence by which the proof of plain facts may be, and is, so often confronted."

Why then, Gentlemen, I have, upon the present occasion, the authority of this author expressed in the most solemn and emphatic language, in order to enforce upon your minds the doctrine which I have taken the liberty of laying down. You see, from Mr. Justice Foster, that there was a time when there was a question with regard to the admissibility of confessional testimony: you see his opinion with regard to the admissibility

of that testimony. Whenever there is a question of admissibility or inadmissibility, of competency or incompetency, it necessarily involves in it a question of credit. If the question of admissibility is got over, then the question of credit goes to the Jury undoubtedly; but it goes to the Jury clogged with every argument that can be applied to the credit of testimony—it goes to the Jury liable to every observation that could have been made to the Judge, in order to prevent him from receiving the testimony. I am sure, therefore, that I am in my proper place, when, upon the effect of this confessional testimony, I am addressing you upon general principles, derived from the works of learned and sound lawyers; deliberated upon and set down in their writings in the most grave and most serious moments.—In the contemplation of what?—In the contemplation of a case precisely similar to the present; in the contemplation of a case of a confession to particular words spoken. I say, that I am in my proper place when I am so addressing myself. Therefore, in the language of my Lord Chief Justice Hale, who lays down the same doctrine, but whom I do not trouble you with citing *verbatim*, upon the present occasion, talking of the blessings of our constitutional mode of trial, particularly applying it to Treason, he says “Juries are not only triers of the cause, but they are triers of the credit of the witnesses; nay, they are not only triers of the cause, but they are triers of the credit of the facts.” Accordingly, I come round again to the principle from which I took my departure, namely, that in point of legal demonstration, this fact of intention is not provably proved; because legal demonstration is that by which, if the witness speaks true, the fact must be true: but, in the case of confessional evidence, the witness may speak true, according to his conception of the thing and yet the fact may be utterly false. It depends upon two things—upon the mind which conveys it, and upon the mind that receives it. And then it is to be weighed with a consideration of those other circumstances which I have taken the liberty of stating and enforcing upon your minds; namely, that it is unrepellable by negative evidence—that it is not indictable for perjury. So that poor old man, who came here to give testimony

mony to these most grave and serious declarations, in which correctness constitutes the most important and principal quality, of which it is the essence, may as well be believed with regard to the incredible story he told about the hare having lived amidst the dogs, without being touched by them, as to what he has stated respecting the conversations of the prisoner.

Gentlemen, I must beg leave to enforce this upon your mind, because I am perfectly confident that honest, just, and humane men, as you are, you will not touch a hair of that man's head if you are convinced that the case is only probably proved: that you will require to be convinced that it is provably proved; that is to say, that the facts upon which the intention depends must be such facts as are true from the very nature of the testimony.

Gentlemen, Mr. Justice Foster says, (as you have heard from the book), the evidence of confession is corroborative evidence. What does he mean by that expression?—He means that it is auxiliary evidence. Auxiliary evidence for what?—To assist the overt acts previously established. Does he not, then, when he uses that word corroborative in 1756, mean the same thing that Lord Coke did, when he said, two centuries before that period, it must be proved provably. Mr. Justice Blackstone confirms the doctrine; and it is acknowledged by the quotation from Hawkins, in 1786. I have, then, the whole history of the law in my favour; the words of the statute in my favour; and the exposition of the statute, as expounded by Lord Coke: I have the doctrine of criminal jurisprudence, as carried into a Court of Justice by the enlightened and great mind of Lord Bacon, acting as prosecutor for the Crown: I have the solemn opinion of Mr. Justice Foster: I have it laid down by Mr. Justice Blackstone, whose eminence you are all acquainted with, and whose works are so popular that no doubt you have read them:—I have all these different testimonies, confirming the doctrine which I have laid down; and I am sure when you come to examine this confessional evidence, you will, with mercy and discernment, examine again and again whether it is possible upon such testimony to convict the prisoner, under such circumstances, of an intention so proved. When he stood



in such a situation of inducement to speak rashly—and when the witnesses stood in a predicament not to retain correctly. I am sure you will hesitate much before you permit yourselves to believe this.

Now, what is the testimony actually given; I have mentioned the four witnesses, Dennis, Winter, Penny, and Le Bretton. I have collected the different mode in which they swear, with regard to this particular point. As to the other points of their testimony, that is a different consideration; I will come to it by-and-by. Le Bretton says, he heard him say he was one of those that invented the gun to shoot at his Majesty. Dennis says, he said the King was to be assassinated by a dart blown through a tube, and he knew how it was constructed. Winter says, he said that he shot at his Majesty, and damned unluckily missed him. Penny says, that he said he was one of the ringleaders of the three that attempted to blow a dart at his Majesty in Covent Garden.

Now, observe first of all what the fact is, upon which the indictment rests, upon which the prosecutors depend for your verdict of guilty. According to their case a conspiracy existed in September 1794, that conspiracy was discovered by Upton; in consequence of Upton's discovering it, three of the conspirators were arrested; Upton was only not imprisoned himself, because he was the spy and discoverer; Crossfield was never mentioned nor advertised, till the month of February after; in the mean time this plot, if it ever had any existence at all, was totally at an end. The positive direct evidence upon which my friend must rest his right to call upon you for a verdict against the prisoner, is this, that here was a plot in which this prisoner had a share; which plot was completely destroyed and annihilated, was put an end to by the arrestment of three of the principal conspirators (as they are supposed to be) in the month of September; and what is this man doing, he is in the harbour of Brest, in a prison ship, in a situation where such conversation might avail him with the French, or he might think so. With an impression on his mind of that sort, to these people, such as you have seen them, he gives four contradictory accounts; they give four contradictory testi-

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monies.

monies. You will observe, some of them suppose that this thing was actually done; some suppose it done in one way; others in another. Now the fact upon which the cause rests, according to the case of the Crown, is this, not that the thing was actually done, but that it was proposed to be done, and was disappointed; that the intent was never carried into execution, even to the length of fabricating the instrument. Does not that shew you, that the very testimony in this case is of so fragile a nature, so brittle and untangible in itself, that it is impossible it should make an impression upon honest humane minds, upon just or upright minds, or minds of integrity and discernment. Is it not clear from this, that all the general doctrines which are written in the books, are peculiarly material in the consideration of this evidence, and that the testimony now before you, is as it were calculated to illustrate the wisdom of those profound and eminent lawyers, to shew the infinite risk of admitting such evidence. Is a person like Winter, believing the most ridiculous and improbable stories, contending even now before you on his solemn oath, earnestly for their truth. Treated, as he himself admits, like a person that was scoffed at and jested by every one. Is a man like Dennis, who seemed to have an enmity against the prisoner, from his declarations at the Privy Council to Cuthbert. Is a man like Le Bretton, who I will prove to you, wished Clarke his Captain to say, that he overheard the declaration. Are witnesses such as these to convince you that instrument, the preparation of a small part of which is proved by one witness only, (the witness Hill); the existence of which never was proved at all. Which received no criminal complexion in this cause whatever; which received no particular application from any of the witnesses to the preparation; was meant for the deep and shocking purpose imputed by the indictment. The confession of the prisoner is contradictory, and contrary to the nature, directly adverse to the case upon which the Attorney General must rest his cause. Can you by possibility believe such confession? But the case does not rest even here. You have had the evidence of Penny; you have had the evidence of Winter; you have had the evidence of Le Bretton; you have had the evidence of Dennis. Gentlemen, you will re-  
collect

collect their testimony with regard to the situation of the ship; with regard to the different persons who were in captivity; who, if these things were spoken, must have heard them; because they were the mess-mates and intimates of the prisoner. You will recollect above all, Le Bretton's testimony, with regard to Captain Clarke; and you will recollect with what unwillingness, when I put some questions to him, he chose to admit that he had any intercourse with Captain Clarke, at Mrs. Smith's. You will recollect Le Bretton's testimony under these particular circumstances. Then in what situation do I stand? Here are the persons whom I have already characterized, and I will not trouble you with characterizing again, who swear to these confessions, to which the witnesses state, that there might have been three times four witnesses present when they were made; who all came to England in the cartel ship; who knew the prisoner; who lived in intimacy with him; who were likewise men of education, and who messed at the same table with him; all of whom might have been brought here in order to prove this case.

Gentlemen, it was in the power of the Crown to have brought them; to what quarter of the world are they fled?—above all, where is Captain Clarke—I cannot conceive why he is not here; he was examined to the fact. The counsel for the Crown knew his testimony. It was impossible for us to bring him here, we could not bear the expence of his detention here. But I will prove most distinctly, that the conversation passed between Le Bretton and Captain Clark, as I have stated it. That is not all, but I stand in this fortunate predicament; I am capable by mere accident, for it was not in the power of this poor man to afford to keep the witnesses at a great expence; they might but for accident have sailed from this Country. I am able, I say, to produce two of the witnesses who messed with, and constantly associated with the prisoner. Now, mark the situation in which I produce these witnesses, and mark the argument which is to be derived from this circumstance, with regard to this confessional testimony. In the first place I will prove to you, from these witnesses, that the prisoner expressed great chearfulness at leaving France. In the next place I will prove he might very easily



have remained behind, if he chose it. I tender these witnesses to the cross-examination of my learned friends; I know their powers and their abilities, I know the sense they have of their duty, and I am ready to risk the confirmation of their case by those witnesses.

I say, then, if witnesses of respectability, that is to say of the highest respectability to be found in the place at the time, always proved to have been in the general society, are brought before you, and swear that they heard no such declarations; does it not amount very nearly to a negative proof. Were they not the best witnesses to have had upon the occasion; were they not the persons who would be most likely to have retained with fidelity the confessions, if there had been any. You will remember that there were two Mr. Bryon's, and others, whose names I need not recite to you mentioned. All of them were brought out of this cartel ship, where are those persons? Gentlemen, their absence is proof, strong proof, in favour of the prisoner; especially when the positive testimony is contradictory to each other, and each witness in a manner contradictory to himself.

Gentlemen, I find it necessary for me, from time to time, in order that I may omit no part of the serious duty that I have to discharge to my client upon this occasion, to summon my recollection to be sure that nothing has escaped me—and upon reflection it does not seem to me that in going over the evidence I have omitted any thing, that might be important for me to observe upon, so far as I have gone. It is a great satisfaction to me, to think that my learned friend who sits by me, who will make up for my deficiencies, is to have an opportunity of addressing you after our testimony is called; and it is still a greater satisfaction for me to think, that the learned persons who preside upon this occasion, and who understand the law, and whose opinions upon evidence are as enlightened and powerful as any that exist in these times, or in any times, will have an opportunity of discharging their duty towards the prisoner and you, upon this occasion.

Gentlemen, what I now state, I have not placed last, from the dread of encountering it; for I am convinced, that if there is any impression from that part of the subject, that I shall be able

to relieve your minds from it; I place it last, because it seems in its proper order. Gentlemen, I come now to the conduct and demeanour of the prisoner, from which my learned friend wishes to draw a proof of his guilt. That is, he states his conduct to have been such immediately after the discovery and the apprehension of these prisoners, as to lead to the supposition that he from that time, down to the time that he himself was apprehended in Cornwall, was in such places and acting in such a manner as to lead you necessarily to conclude that he must be guilty.

Gentlemen, in the first place I am sure that is a conclusion that you will not rashly jump to upon such evidence as you have had of it, even if there was no answer to be given to that evidence. Because you, who know the nature of man, know perfectly well, that when a person is likely to be put in a situation of peril, although he may not be guilty, he may wish to keep out of that situation of peril; such conduct is perfectly natural, and therefore it is too much to say that a bad motive is always to be imputed, when in point of fact, unless a bad motive is visible, the motive may be indifferent; and you ought to impute that motive which leads to mercy, rather than that which leads to a conclusion of guilt. But consider what the nature of this gentleman's demeanour was; he remained some days in London after he knew of the discovery of this supposed plot; he then went to Bristol. Now the testimony that you have with regard to his being at Bristol, is of this nature; he assumed no feigned name; he retired into no private place; he made no attempt to leave the Country. Yet Bristol is a sea-port town of the first resort; there is constant and facile communication to every part of the world; to neutral ports, to places where he might have ensured protection. Whereas, if you know the South Sea Fishery Trade, you must be aware that they touch at no place; and though a long voyage, they return to this Country without landing any where. He goes to Bristol, and never attempts to leave the island, at Bristol; he never secretes himself; he goes into places of public resort, and does not change his name. Now, what is the particular situation of Bristol; compare the situation of it with the situation of London. I need not state to you, but it

is incumbent upon me to make every observation, however common it may be, I need not state, that a man at Bristol would be more easily discovered than in London. It is a small place, and has a great intercourse with the capital. He afterwards returns to London, and you observe it is the month of January before he embarks. He goes on board at Portsmouth, a sea-port town, where there is a constant and numerous concourse of his Majesty's Officers; persons always upon the watch. A town where there is, to the honour of the Chief Magistrate be it spoken, the best regulated police that exists in any town in the Kingdom. Can you have an imagination that a person should land under his own name, and go to places publicly to buy things, who is sought after, as is stated, to be seized by Government; that he should not conceal himself at all; and that his demeanour should be held criminal. They put into Falmouth; from Mr. Le Bretton you have it very unwillingly stated that he went but once ashore, under no concealment. If I had had Captain Clarke I could most undoubtedly have established, beyond a contradiction, that he lived very much on shore, and with him too; but I have it not in my power to have that person here; I may be able perhaps to establish something like it by other testimony. Observe the situation of Falmouth; it is the most westerly port in this Kingdom, the place from whence all the public packets go; it is a small town, of only one street, where no person can conceal himself; it is a place of resort for all the King's Messengers, the very persons sent to apprehend those accused of Treason; it is the place, therefore, where such a person was more likely to be taken, than in any other place in the Kingdom. I have the evidence that he did go on shore once, I hope to have the evidence that he went on shore more frequently; but I can say this, upon the evidence before you, that at this time he never changed his name, and yet they are there from the 3d to the 13th of February; and all this time it is supposed that there was an eagerness, an anxiety upon the part of Government to seize this person.

The vessel sails, and is captured on the 15th, I come now to a most important fact indeed. You have had the evidence of



confession. His declarations under the circumstances which I have stated. You have had the evidence likewise from these witnesses, stating that he expressed great joy at the idea of getting to France. You have had the declaration likewise stating, that he had taken some part in the minute arrangements for the French, at Brest. In short, you have this as evidence of declaration—hark what you have upon the other hand. You have the evidence of the fact itself—of what fact?—of a fact in which he risked his life in a double view, where he might have been killed in the attempt, or where he must have gone to inevitable execution, if he had not been killed in the attempt. What was the attempt? An attempt, together with the others, to rescue the French ship. To seize the mariners and captain of the French ship that captured them, for the purpose of escaping—of escaping from whence?—of escaping from France, not of going to France—at what risk? at the risk of his life, at the inevitable risk of his life, he is stated to be one of those; I shall prove it more incontestibly, perhaps, but he is already upon the evidence proved to be one of those who joined in that design. I am not talking of the morality of the attempt. I am not talking of the abstract principle that ought to guide men, perhaps, in that situation. I am sure my Lord will think, however, that whatever may be the abstract morality, or whatever casuists might say upon that point, that I am using an unanswerable argument for my client upon the present occasion. Because I am establishing an act against loose declarations—What are the declarations? His eagerness to go to France. What is the nature of the declaration? What the situation of the witness? That he cannot, on his evidence of confession, be convicted of perjury. What was said by that great and enlightened luminary of the law, Lord Mansfield? What was his perpetual doctrine in the distribution of criminal and civil justice, for the long period of time which he presided with such eminence and effect, over the justice of this Country? What was it but this? Look to the facts and circumstances, see how what lawyers call the *evidentia rei* is. See how the thing itself stands, for that can never lie. No ingenuity can twist it. No cross-examination can shake it. No loose words can vary it.

It is a thing that carries conviction to the mind irrefragably if it is proved. Then I have proved from the mouth of unwilling witnesses. From the mouth of that unwilling witness Le Breton. From the mouth of the other witnesses who came here to prove the confessions. Who prove as a confession the joy of this man on his going to France; and these very witnesses give me the fact, that he attempted, at the risk of his life, to seize the captain and the French ship that had captured them, along with the other English sailors, with a view of releasing themselves from French captivity, and avoiding French bondage. I am sure if he were the man they attempted to describe him, he would never have been impressed with such feelings as those. Would a base man who is supposed to have aimed at the life of his Sovereign. Who is supposed to have been guilty of every species of immorality. Who is supposed to have entertained public principles detrimental to the first principles of this blessed Constitution (which I hope and trust will last forever.) Would it be supposed that a person in that situation would, at the risk of his life, attempt to free himself. No. What would the natural conduct of such a man have been—It would have been to have entered into a conspiracy for the purpose of discovering it. Does it appear from these men that he ever discovered it? He entered into that design, at the risk of his life he did it to do what? to release himself from French bondage—to restore himself to English freedom. Gentlemen, he did more, the fact proves this; it proves that he was so incapable of the crime imputed to him, that he was not capable of disclosing the design to the French, who then most undoubtedly would have received him with joy in France. Who then would have said, you are our deliverer. Who then would have handed him over to the Convention, to receive a reward for the practices which are imputed to him, but not proved in the smallest degree, for all that is proved is, that he stood talking at the poop with the commander. Lay this fact up in your minds. Recollect the character of the witnesses who prove it. Recollect the importance of the fact in all its bearings, and then tell me whether, when it is united with the common observation on the nature of man,

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with those learned observations upon the nature of declaratory confessional evidence; whether it does not amount to the most unanswerable proof that the prisoner, whatever the levity of his character may be (and he is proved to be of a light character) and whatever his debaucheries may be with respect to wine, or opium, or women; (and I am not standing here to defend the moral character of the prisoner, but to state reasons, and I am persuaded unanswerable reasons, why you will not suppose him guilty of the crime with which he is charged) when you unite that fact with the nature of the confessions, it will be difficult to conceive that the prisoner could be the man, to conceal a design against the French Captain, and to harbour a design against the life of his Sovereign.

Gentlemen, I really feel now that I have exhausted almost every part of this case, yet there are two circumstances remaining, which I likewise will venture to state my opinion upon to you; and, I think, I can account for them in such a manner, as that even if any impressions should remain upon your minds now, with regard to the prisoner, they likewise will be wiped away. The first is his conduct with respect to his name in France—The next is his conduct upon his landing in England.—His conduct with respect to his name in France seems, to me, to be of a most extraordinary nature. If any thing is to be imputed to it at all.—You observe, from the evidence of all the prisoners, that he was known to every man that came over in the cartel, that he lived publicly with them, and made these declarations, as they say, before several other people. None of whom, however, were called, and he is then with a design, and in order to impute this Treason to him, to be supposed to have changed his name. Now if I have destroyed the colour of the attempt to be given to the fabrication of this instrument, by a confessional evidence, that circumstance alone will have little effect.

But, in the first place, you have it proved that he was a man in very difficult circumstances, as to his pecuniary affairs. In the next place, will you consider this according to the common rules



rules of action. He was perfectly known, his name of Crossfield was perfectly known by this time. They say it was not so generally known before, although Le Bretton admits that Clarke might have known that his name was Crossfield; but that he knew him generally by the name of the Doctor, but he who had been known by the name of Doctor, was universally known in the French prison ship, by the name Crossfield.—Known by that name, remark what he does. He changes his name to another, to do what? to come to England—with whom? with the very persons with whom he had lived under the name of Crossfield. With that man, Winter, with whom he had lived every day. It does not appear that when he landed here, and was taken, that he ever attempted to conceal his name, none of the witnesses that were brought prove that he then called himself Wilson, on the contrary, he answered to the name of Crossfield immediately, as Colmer proved on his cross-examination. Now, is it not a most extraordinary thing, that a person for the purpose of concealing either an imputed Treason which he was to commit, or concealing himself from an imputed Treason which had not been committed. In which all the other persons had been arrested. That he should, for this purpose change his name, to the evident and manifest knowledge of all the persons that came along with him in the ship, who were equal to the discovering of him the moment he landed.

The other circumstance is with regard to his conduct upon landing; you have heard what the nature of his character is. You have heard of his levity. You have heard of his habit of intoxication. You have not heard from these witnesses, positively, that he was very much intoxicated at that time, but you have not heard the negative of it. They say he was a little intoxicated, now they were not accustomed to him, and it is very difficult to say whether a person is much or little intoxicated with whom you are not much acquainted. Intoxication is no defence against a crime, but it is a clear defence against that sort of conduct that is to raise an inference of a crime. Because, although drunkenness will not release a person from the guilt of

an actual crime committed; yet drunkenness, most undoubtedly, where you are only to raise an inference from a man's actions, will destroy all inference to be raised from those actions.

Now, observe what he does after he had that conversation and colloquium with the constables, which they stated. He falls fast asleep, and he sleeps all the rest of the way, for more than the half of the way. Is it not a most extraordinary thing, that if this person was not either inebriated, or in such a state that his mind should receive no impression, from the apprehension of the crime for which he is now tried, that after a conversation of this kind he should have fallen into that state, and remained in it all the rest of the way. I again call upon you to examine this case according to the principles of human nature, and the rules of probability; and say, whether the conclusion must not necessarily be that this strange wild conversation was the effect of inebriety.

I have now, I think, gone through every thing with relation to the evidence that has been given, and it is now my purpose very briefly to address you upon the nature of the evidence which I shall lay before you. Gentlemen, I shall do this very briefly for many reasons.

First of all, because I have consumed a great deal of your time. In the next place, because my learned friend, who comes after me, I know will do it with great ability, and with great advantage to his client.—But, Gentlemen, there is a part of it which I am under a necessity of stating to you very particularly, because it relates to one of the main and singular features of this cause. Gentlemen, you have heard again and again, from Mr. Attorney General, of the name of Upton; you have heard that name from all the witnesses, except the witnesses to the declaration, who have been called; you have heard that name likewise from Mrs. Upton, the widow, as she stated herself, of Mr. Upton. Gentlemen, I hardly know how to state to you the extraordinary circumstance I am about to mention. There was no part in this case, I do assure you sincerely, that gave me more anxiety than the report that this person had been drowned, or was no more. I know that if this person  
had

had been brought here, that his demeanour alone, and those circumstances which could have been proved respecting him, would have completely satisfied your minds upon this subject, and that all those observations, that I have had the honour of addressing to you, would have received together a double aid, merely from his demeanour, and from his character.

Gentlemen, the evidence of Mrs. Upton is, that her husband's HAT has been found, the only part of his apparel, and that he left a seal with her the morning he went away. I could not understand what my learned friend, Mr. Garrow, meant by that question if it was not this, to impute that this was a token of love and friendship, which he left with a wife whom he was to see no more. Therefore, it is to impress this idea, that he had the premeditated intention of taking away his own life, I can put no other sense upon that fact. Gentlemen, his hat has been found, Mrs. Upton did not say that his body had been interred, did not say his body had been found; and yet it is a rare thing, indeed, if a person has been drowned, or if a person has been made away with, that there should be nothing found of the body. And it is more rare in this Country than in any other, because we all know there is a legal proceeding upon all events of that sort.

Gentlemen, Upton has not appeared since that day. I can assure you it has been an anxious wish of mine that he should; whether I can shew that Mr. Upton will appear again in this world or no, I am sure I cannot pretend to say; but I am perfectly sure of this, that I shall be able to lay before you testimony, which will at least amount to as strong testimony of his life, as Mrs. Upton's amounts to of his death.

*Mr. Attorney General.* The Court stopped me in this, I only now lay in my claim to answer the evidence if any such is offered.

*Mr. Adam.* Gentlemen, I have received the intimation of my learned friend, as I receive every intimation from him, I am sure with great respect, and I have considered (as far as the moment will give me an opportunity of considering) what course I shall steer upon this occasion. And, Gentlemen, I have no hesitation in saying to you, and in saying to my Lord,  
that



that whatever the wisdom of the Court may hereafter determine, with regard to the testimony that my friend wishes to propose upon that subject, I think it so essential to this case, in one point of view, not at all essential in another, which I shall state by and by, that the evidence with respect to Upton's doubtful situation should be laid before you, that I shall certainly think it my duty to do it. When I say in one respect, and not in another respect, I will state, to my learned friend, how I do not think it essential in one respect.—It is not from the least idea that every diligent search, that every active enquiry that talents and integrity can direct, and industry and integrity execute, has not been used upon the present occasion, in order to obtain this man, and in order to bring him into a Court of Justice, because I know, perfectly well, that my learned friend is that person who never states for effect, that which he does not mean; and, therefore, when I say that I shall give evidence respecting the doubtful state of Upton, I say that, most undoubtedly, without the least view, or the most distant hint, that every industry has not been used, and no person can pay any man higher respect than I do the person who exercises the function belonging to that situation.

But in another respect I think it most essential; I think it most essential for this reason, because if I can raise a doubt in your minds with regard to the existence of this man. If I can fasten upon your understandings, a belief that this man is not dead, but has gone out of the way. If I can raise a presumption in your minds, that the seal was delivered as a trick and as a plan: and that this man (who had committed every other crime almost) had contemplated, or at least wished others to believe that he contemplated to end his life by suicide. If I can establish those things, I establish the foundation of this plot, to lodge in a character, and to result from a mind fraught with such infamy. Loaded with such opprobrium, that I hardly know how to find words to express it. Therefore, as it has its origin in this man. As it intrinsically has its origin in him. As it declaredly has its origin in him, I think, judging as I now do, under the friendly warning of  
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the Attorney General; judging as I now do for the interests of my client, I think it essentially necessary to lay this evidence before you.

Gentlemen, I have already observed upon the effect of that evidence, and, therefore, I will not take up your time one moment longer upon that part of the subject; when that evidence is given, it will be for my friend to direct your attention to the effect of that evidence; and if the case should take the turn, which it seems it may possibly take from what my learned friend, the Attorney General states; I then may have an opportunity again, perhaps, of stating some words to you upon the whole of the evidence relating to Mr. Upton.

Gentlemen, the other evidence which I have to lay before you, I have almost sufficiently pointed out in the course of what I have said.—I shall produce some witnesses, who were in France, to the points there.—I shall produce a variety of witnesses to Upton's character.—I shall produce a variety of witnesses to the circumstances of the times, though they are proved by such history as will be admitted; and a variety of witnesses to the circumstances of the disputes, of the rancour, of the animosity, and of the challenge between Upton and the other prisoners, and there my case will rest.

Gentlemen, I have now little more to add—I have in the first place, however, to return to you my most sincere, and I do assure you, Gentlemen, my most grateful thanks, for the profound attention which you have been pleased to pay to me during a very long address, upon a very important subject, in a case in which I felt great and almost unsupportable anxiety.

Gentlemen, I cannot fail to have perceived, from the nature of the evidence, that prejudices may have arisen in your minds, or in the minds of those who heard the evidence, with regard to the prisoner at the bar; for the evidence certainly went to a variety of points which tended to shew the general disposition and tendency of his mind, but not the particular application of that mind to this particular fact. I am sure that you will lay aside all prejudices, except such as the evidence necessarily imposes upon you. Gentlemen, the unfortunate person at the  
bar

bar stands now before you, after you have heard the evidence which I have stated, to have his deliverance, or to have a verdict of Guilty. The whole form of my address has, I hope, been calculated to impress soberly, seriously, and I trust without any impropriety, anxious as I am to discharge my duty to my client, upon your minds the necessity of an acquittal. I wish you to consider always upon what principally this cause depends—I wish you to recollect, that there is no colour whatever given to the Treason in question but from the evidence of confession. I will not weary you with a repetition of arguments, or even with a summary of arguments, upon that part of the subject: I have relied on authorities from times when men spoke with great force, and thought with great correctness. Let me, then, impress on your minds, in words much more emphatic than any that I can invent, the particular duty that you have upon that particular branch of this serious cause.

Gentlemen, my Lord Strafford, when he was tried for such a crime at the bar of the House of Lords, upon evidence such as you have heard, said, with that venerable and powerful eloquence which belonged to his superior mind—"It is now ages since any man was touched to such a height *on such evidence*. We have lived happily for ourselves at home—we have lived gloriously abroad to the world; let us not awake those sleeping lions to our own destruction—those sad precedents of judicial disgrace, which have lain so many ages by the wall forgotten and neglected."

Gentlemen, let me apply these words to the present case; let me entreat you, not slightly upon such evidence, to awaken these sleeping lions. What is evidence against one man may be evidence against all.—The case of every individual prisoner that comes before a Jury is the case of the whole community; because the whole community are interested in the distribution of justice, and in the principles upon which Juries decide. This, in that view of it, like every other case, is a most important one. In that view of it I intreat you to consider of it; and, without adding one word more, I now, on behalf of my client and myself, return you my sincere and humble thanks for the attention  
with



with which you have honoured me ; and I anxiously implore Heaven so to enlighten your minds, that you may deliver your judgment in mercy, by a verdict of acquittal.

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### EVIDENCE FOR THE PRISONER.

*Mr. Gurney.* We shall now call evidence to disprove the existence of the conspiracy charged in the indictment.

*Mr. James Parkinson, (sworn)*

Examined by *Mr. Gurney.*

Q. What is your profession ?

A. A surgeon and apothecary.

Q. Where do you live ?

A. In Hoxton-square.

Q. Were you in the months of August and September, 1794, a member of the Corresponding Society ?

A. Yes.

Q. Did you, at that time, frequently attend their meetings ?

A. The meetings of the Committee of Correspondence, not the General Committees.

Q. Was a person of the name of Upton a member of that Committee ?

A. No.

Q. Was Mr. Le Maitre a member of that Committee ?

A. No.

Q. Was Mr. Higgins a member of that Committee ?

A. He was.

Q. Was Mr. Smith a member ?

A. He was.

Q. Were there, to your knowledge, any enquiries instituted in

in that Committee, or in the General Committee, by either Le Maitre, Higgins, or Smith, respecting Upton?

A. By Higgins and Smith there was an enquiry instituted, at the request of the Committee of Correspondence, among whom I was one who was very solicitous for that enquiry into the character of Upton.

Q. What was the charge which they then brought against Upton?

A. It was stated either by Mr. Smith or by Mr. Hodgson that he had heard it reported that Upton had set his house in Cold-bath-fields on fire.

Q. Was that enquiry pursued to any considerable length?

A. They were desired at a meeting of the Committee to make the enquiry.

Lord Chief Justice Eyre. You do not mean, I hope, to detail to this Court the proceedings of such a Committee upon a charge which ought to be heard here and not there; if you go to the point to shew that there was any enmity between Smith and Higgins and Upton, very well; but I beg, for the honour of this Court, that we may not have their proceedings detailed here.

Mr. Gurney. I only wish to shew, that the enquiry was instituted at the instance of those persons; with submission to your Lordship, I could not come at the effect without the cause.—Were there, in point of fact, any disputes upon that occasion between Smith, Le Maitre, or Higgins, and Upton?

A. I can only speak of any dispute that subsisted between them by the report of Smith and Higgins.

Q. That is not evidence—Did you, upon that occasion, see Upton yourself?

A. Only once; which was for the purpose of delivering to him, or carrying a letter to be delivered to him, expelling him from that Society.

Q. Were you at any meeting of the Corresponding Society, at which Smith, Higgins, Le Maitre, and Upton were present?

A. At one meeting.

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Q. Did

Q. Did any thing pass at that meeting between these parties, either peaceable or hostile ?

A. Nothing particular.

*Mr. James Parkinson.*

Cross-examined by *Mr. Attorney General.*

Q. Are you the same Mr. Parkinson that was examined here some little time ago ?

A. The same.

Q. Are you the same person that produced, upon that examination, a paper entitled, La Guillotine, or George's Head in a Basket ?

A. I do not know that it was produced in Court; it was not produced by me.

Q. Are you the same person that produced that paper at the Privy Council ?

A. I produced no such paper at the Privy-Council.

Q. Have not you had in your possession a paper called La Guillotine, or George's Head in a Basket, that you got at that Society ?

A. I have that paper now.

Q. Have you it about you ?

A. I have it not here.

Q. You had it here at the time of the trial I allude to ?

A. I had it.

Q. Do you know a person of the name of Pearce, who was a member of the Society ?

A. Yes.

Q. Have you forgot that Le Maitre, Higgins, and Smith, met at Pearce's, and were reconciled over a bottle of wine ?

A. I do not forget it, because the gentleman who asks the question told it me.

Q. Do you or do you not know, that having had a quarrel they were reconciled, and met at Pearce's upon that reconciliation ?

A. I heard that they were reconciled, but I knew the place from the learned Counsel, and from no one else.



Q. You knew that they were reconciled not from the learned Counsel, you heard the place from the learned Counsel, as I understand you?

A. I was informed they were reconciled before you informed me of it.

Lord Chief Justice Eyre. Who were reconciled?

A. Le Maitre and Upton.

Mr. Gurney. He only says he heard it.

Mr. Attorney General. Do you know Hill, the turner?

A. Yes.

Q. You had a considerable situation, I understand, in the Society you belonged to—you were one of what is called the Committee of Correspondence?

A. I belonged to the Committee of Correspondence.

Q. Sometimes, I believe, called the Secret Committee?

A. Once called so, in my hearing, by Upton, for which he was very much reprobated.

Q. Hill was a member of the Society, was not he?

A. He was.

Q. Do you recollect going to Hill, after some of those persons had been apprehended?

A. I went to Hill for the purpose of gaining all the information that I could respecting this business; I went to other places for the same purpose, that I might give the Privy Council all the information I could.

Q. You never heard of any quarrel that Upton had with Crossfield, did you?

A. Never.

Q. Did you hear from Hill any thing about any models that any body had given him orders for?

A. It was in consequence of Hill having mentioned his uneasiness of mind respecting something which he had turned that I called upon him; it was not until then that I conceived there could be any thing in the plot.

Q. Did he name to you, or to any body in your hearing, who the person was that came to bespeak the models?

*Mr. Gurney.* I submit to your Lordship that is not a question to be asked ?

*Mr. Attorney General.* I will not pursue it then.—Do you know Crossfield's hand-writing ?

*A.* No.

*Q.* Did you ever see him write ?

*A.* Never.

*Mr. James Parkinson,*

Re-examined by *Mr. Gurney.*

*Q.* You have been asked respecting some paper, which it is said you got in the Society—Did you or not get that paper in the Society ?

*A.* I swear positively I did not.

*Mr. Attorney General.* Mr. Parkinson, I must beg of you not to go away.

*John Bone, (sworn)*

Examined by *Mr. Gurney.*

*Q.* What are you ?

*A.* A muslin clearer.

*Q.* Where do you live ?

*A.* At No. 8, in Weston-street, Southwark.

*Q.* Were you, in the months of August and September 1794, a member of the Corresponding Society ?

*A.* Yes, I was.

*Q.* Were you a member of the General Committee ?

*A.* I was.

*Q.* Was Mr. Upton a member of that Committee ?

*A.* He was not.

*Q.* Was Mr. Le Maitre ?

*A.* He was.

*Q.* Was Mr. Smith a member ?

*A.* Yes.

*Q.* And Mr. Higgins ?

*A.* He was.

*Q.* Was Mr. Crossfield a member ?

*A.* He

*A.* He was not.

*Q.* Do you know of any disputes between Upton and Smith, Higgins, or Le Maitre, or either of them?

*A.* I do.

*Q.* When did these disputes originate?

*A.* I cannot be particular as to the time when they took place; it was some time after the commencement of August.

*Q.* How long did they continue?

*A.* I never knew that they were healed, because they originated in Upton's bad character; they had a bad opinion of him in consequence of that bad character, which I never knew was taken off.

*Q.* Can you recollect the days upon which Smith, Higgins, and Le Maitre were taken up?

*A.* I believe it was on the 25th of September, or somewhere thereabouts.

*Mr. Gurney.* I dare say the dates will be admitted.

*Mr. Attorney General.* I rise to state my admission of the times when these persons were apprehended.

*Mr. Gurney.* Le Maitre and Higgins were apprehended on the evening of the 27th, and Smith on the evening of the 28th.—Now, were those imputations respecting Upton's character supported by either Smith, Higgins, or Le Maitre?

*A.* Yes, they were by Smith and Higgins I know; I never had an opportunity of conversing with Le Maitre, because I only saw him in the General Committee.

*Q.* Were you at any meeting when Le Maitre and Upton were present?

*A.* Yes, in the General Committee.

*Q.* At that time was there any charge brought by Le Maitre against Upton?

*A.* I do not recollect that there was.

*Q.* Was there any dispute between them at that time?

*A.* There was a great dispute.

*Q.* Was that dispute carried on with a great degree of violence?

*A.* Yes, on both sides.



Q. Can you recollect the date of that?

A. Yes; it was, I believe, on the 4th of September.

Q. Do you recollect any of Upton's expressions respecting Mr. Le Maitre at that time?

A. I remember that they quarrelled, that their quarrel rose to a considerable height, and they threw the whole assembly into a very great degree of agitation, in consequence of a letter that had been conveyed into the General Committee, casting a stigma upon the Committee and the Society; which letter appeared to have been written by Upton. When the letter was known to be written by Upton, and he confessed it, Le Maitre was remarkably severe upon him; he called him *the man*, for he considered him unworthy the name of *citizen*, and thought he ought to be turned out of the Committee; Upton, in consequence of this, broke out in a strain of abuse, and used all those epithets which men in the habit of abuse are accustomed to use.

Q. Do you recollect any particular expressions that he used?

A. No.

Q. Were they expressions of a violent nature?

A. They were violent.—Upton threatened to be revenged of Le Maitre: Le Maitre said, that if he had any thing to settle with him he had better do it at another time than the present; and for that purpose he wrote his address, and gave it him.

Q. Were you present at any quarrel between Higgins and Upton?

A. The same evening, in consequence of Upton's very disorderly behaviour in the General Committee, a vote of censure upon Upton was moved by Higgins in the General Committee: the Committee discussed the propriety of it; some were for passing the vote, others against it; but the generality of the Committee being of opinion that a vote of censure should be passed upon him, Upton seemed inclined to avoid the disgrace of a vote of censure, by moving towards the door, in order to go away; Higgins then rose, and said to the chairman—If you are about to pass a vote of censure upon Upton you must be quick, for he seems to be hopping off. Upton felt himself extremely angry, and said—You wretch, that is a reflection upon my  
natural

natural infirmity. Higgins replied—If he was to answer him in his own dialect he should tell him he lied, but it should suffice at present to say he did not mean it so.

Q. Upon that occasion, or any other, was there any dispute between Upton and Smith?

A. I do not recollect any dispute between Smith and Upton, but Smith, Higgins, and myself, were members of the Committee of Correspondence, where Upton's bad character was first broached, and Smith and Higgins were very active persons in getting information for the Committee relative to his character upon this occasion; Smith said, that if Upton's name was continued in the printed lists of the Society, his name should not continue in it.

Q. Were you present at any other dispute between Upton and those persons?

A. I do not recollect that I was.

Q. Were you present at any meeting subsequent, when any thing like a reconciliation is supposed to have taken place?

A. Certainly not.

Q. Was this enquiry, by Smith, Higgins, and Le Maitre, concluded at the time of Upton's examination, and of their examination?

A. The business had come to a conclusion, for aught we knew; for we had resolved to publish our lists without the name of Upton being in them.

Q. Then, in point of fact, this enquiry, thus pursued, had not terminated till the night before their apprehension?

Lord Chief Justice Eyre. He mentioned a fact, that the night before they had resolved to publish a list without Upton's name.

Mr. Gurney. Had the enquiry been pursued regularly from its commencement till that time?

Lord Chief Justice Eyre. Ask him what they did respecting it afterwards.

Mr. Gurney. Do you recollect any specific date, subsequent to the 4th of September, when any thing passed between Upton, Smith, Higgins, and Le Maitre?

A. I do not.

Q. But, in point of fact, the enquiry had not terminated till the night before his apprehension?

A. It had so far terminated that we were satisfied about Upton's character.

*John Huttley, (sworn)*

Examined by *Mr. Adam.*

Q. What are you?

A. A watch-spring maker.

Q. Where do you reside?

A. In Great Sutton-street, Clerkenwell.

Q. Did you know Upton, the watch-maker?

A. Yes.

Q. How long have you known him?

A. I had a knowledge of him for about five years.

Q. Did you see him about the month of September, 1794?

A. That was about the time.

Q. Do you remember any conversation that passed between you and him at that time?

A. I was in company with him and another person.

Q. Perhaps you may recollect it better if I tell you that a person of the name of Brown was present?

A. He was.

Q. What was that conversation about?

A. Concerning the persons who had been taken up; Le Maitre, Higgins, and Smith.

Q. What passed upon that subject between you?

A. I walked backward and forward—I looked upon Upton to be a dangerous man, and I did not care to be seen with him: I heard him discoursing concerning these people with Brown; he said it was their own faults, that he should never have troubled his head about it, but they had made very free with his character: I said—Perhaps they may have known as much of you as I have known.

Q. Was any thing more said about these people?

A. No.



*William Brown, (sworn)*

*Examined by Mr. Adam.*

Q. Do you know Upton ?

A. Yes.

Q. Do you remember having had any conversation with him in September, 1795 ?

A. Yes.

Q. What did it relate to ?

A. I was asking him his opinion concerning Crossfield, what it was that he was detained for ; he said—God knows, I cannot tell : he mentioned the place where he was detained, down in the Country, but where I cannot recollect : I asked him further if he knew what the chief accusation was against him ; he said, he did not know.

Q. Had you any conversation with Upton about Le Maitre or Higgins ?

A. Yes ; I asked him if he did not know Higgins and Le Maitre ; he said, yes, he knew Higgins, Le Maitre, and Smith, they were three damn'd villains, and had used him in the most villainous manner, and that they were still continuing to hurt his character in every place where he went ; that they had attacked him in the street, by giving him the name of informer, and abused him in that manner, and had gathered a great number of people round him ; that he thought his life was in danger by them, and if they did not desist he would take some other means. I told him he should make an allowance, considering the ill-usage he had given them, by laying an accusation against them apparently unfounded, as the prisoners had been acquitted ; he said, I was unacquainted with the former part of the story seemingly ; and then he told me he would relate the whole to me ; he said, " that prior to that, when the state prisoners before were taken up, some of their families being in want, the London Corresponding Society chose to raise subscriptions, to give some little assistance to some of the families, they thought it convenient to open a public subscription, and that among the rest of the houses to be opened for that purpose mine was one ; that Higgins, Le Maitre,

and Smith came forward, and accused me as a thief, and a swindler, and an incendiary, and the Society refused to give me a fair trial upon it; and they still continue to go on in that abusive style in public company." I told him that this accusation certainly could not arise from nothing: he said, "he would tell me what it arose from:" he said, "he did once keep a house in Cold-bath-fields; that his house was burnt, and that he was advertised, and a reward offered for the apprehension of him—that he agreed with a friend of his, that provided he would give him a note of hand, payable to him, or to a part of his family, for a part of the reward, he would disclose something which would bring him in so much money; accordingly his friend did so, and his friend delivered him up to justice;" and he appealed to me to know whether there was ground for them to accuse him in public for such a thing as that, if such a powerful body of men as the Phoenix Office, had entered a prosecution against him, and had not been able to prove any thing against him, whether he was not acquitted in the eye of the law, and whether any man ought to come forward and publicly accuse him.—I made a reply, that there was room for suspecting him to be a man of a bad character; and whether he had brought the accusation against Higgins, Le Maitre, and Smith, from a good or a bad motive, that it had done the Society good rather than harm, for the Society had increased in three weeks more than ever it had done before.

*Mr. Adam.* Have you any thing more to say about Upton and Le Maitre?

*A.* No.

*Mr. Attorney General.* I have no objection to any of these orators; I am ready to admit that Upton is what he stated himself to be, when he brought forward such a charge in which he was the accomplice; that he was as bad a man as you please; and I have no objection to your taking his motive to be as malicious as you please.

*Mr.*

*Mr. John Cleverton, (sworn)*

*Examined by Mr. Adam.*

Q. Were you a prisoner at Brest, when Mr. Crossfield was a prisoner there?

A. I was.

Q. Did you live on board the same prison ship with him?

A. I did.

Q. For how long a time?

A. From the 19th of February till early in May.

Q. Had you an opportunity of seeing much of Mr. Crossfield during that time?

A. Yes, I was constantly with him.

Q. Were you with him at the time he came away?

A. No, I went to the hospital ill.

Q. You remained behind when he came away?

A. I was in the ship after he left it.

Q. During your intercourse with Mr. Crossfield, have you ever heard him make any declarations respecting the King?

A. No, I do not recollect any; I have frequently heard him sing republican songs.

Q. Did you ever hear him make any declarations respecting any plot?

A. Never.

Q. You lived with him very constantly?

A. Yes.

Q. Did you mess with him?

A. Yes.

Q. Who was at your mess?

A. Captain Clarke.

Q. He was the Captain of the Pomona?

A. Yes.

Q. Mention the names of any others that you recollect?

A. Captain Bligh.

Q. Is he in England now?

A. I believe he is at Exeter—Mr. Dennis, Mr Denton, the mate of Captain Bligh's ship.

Q. Do



Q. Do you know whether he is in England?

A. I believe he is at Exeter.

Q. Who else?

A. Mr. Widdiman, the mate of the ship I was in.

Q. And you were all at the same mess together?

A. Yes.

Q. Mr. Crossfield used to be very jolly?

A. Yes.

Q. I believe it was a custom there for persons who were sick on board the prison ships, to be carried ashore to the hospital?

A. Yes.

Q. Did it require any serious illness to be carried on shore to the hospital?

A. No, I had a slight illness and went to the hospital; I was in the hospital from the 18th or 19th of May, till sometime in July.

Q. In consequence of that you did not come over in the cartel?

A. I came over in the same cartel.

Q. Could you have avoided coming over in that cartel?

A. I did not try, I wished to come over.

Q. If you had rather wished to have remained, could not you have remained there?

A. I cannot tell that.

Q. Would not you, upon a representation of a slight illness, have been carried to the hospital?

A. Yes; several persons had been carried to the hospital, two or three days before we came away, and consequently did not come over in the cartel.

Q. Did you come in the same ship with Mr. Crossfield?

A. I did.

Q. You knew him perfectly well by the name of Crossfield?

A. Yes; he signed his name as a witness to some papers of mine.

Q. At what time was that?

A. Early in May—a little before I went to the hospital.

Q. Was

Q. Was he generally known, in your mess, by the name of Crofsfield?

A. We always called him Doctor, in the mess.

Q. But his name was known?

A. Yes, it was to me, because I saw him sign his name.

Q. You called him Doctor, as you would any other medical man?

A. Yes.

Q. Was he the only medical man in your mess?

A. He was.

Q. How long were you in your passage over?

A. Three days.

Q. Were Le Bretton, and Dennis, likewise in the cartel?

A. Yes.

Q. Did you ever happen to see them and Mr. Crofsfield together?

A. Never particularly engaged in any conversation.

Q. Do you remember seeing them particularly together in Breft harbour?

A. No, not more so than others.

Q. Did they live in that sort of intimacy that you could suppose Mr. Crofsfield told them any secret?

A. They were intimate, Captain Clarke, and Mr. Crofsfield and them, the early part of their time.

Q. How came Dennis and Le Bretton, not to be so intimate with them the latter part of the time?

A. I understood it was from a watch that Mr. Crofsfield had of Mr. Clarke's, that he would not give up to him.

Q. Did you ever hear any conversation between Le Bretton and Dennis, and Mr. Crofsfield, upon the subject of what was in the Pomona, at the time of the capture?

A. No; but I heard Crofsfield say, that he would take this watch.

Q. Mr. Crofsfield then continued in your mess till the very last—Did he mess with you in the cartel as you came over?

A. No.

Q. Where did you land?

A. At

*A.* At Fowey, in Cornwall.

*Q.* How did Mr. Crofsfield appear, at the time of coming away from Brest?

*A.* He appeared to me to be very glad that he was coming home.

*Q.* He did not shew the least unwillingness to return, did he?

*A.* No.

*Q.* What is your profession, and situation in life?

*A.* I was going out Agent to the Canaries.

*Q.* For whom?

*A.* For a house in St. John's-street.

*Q.* And you were captured?

*A.* Yes.

*Q.* Did Mr. Crofsfield drink hard?

*A.* Very hard.

*Q.* You were going out Agent to the Canaries?

*A.* Yes, I was going out for wines for Government

*Mr. John Cleverton,*

*Cross-examined by Mr. Attorney General.*

*Q.* You say Mr. Crofsfield appeared to be very glad when he was coming home?

*A.* Yes.

*Q.* Perhaps you might have been by when he said, just before he came away, that things had been all settled now to his satisfaction?

*A.* I do not recollect that expression.

*Q.* Were you by when he was mustered by the name of Wilfon?

*A.* I was in the ship, but I do not recollect his being mustered by the name of Wilfon; I heard he had put his name down as Wilfon in the list, but I never saw it.

*Q.* You frequently heard him singing republican songs?

*A.* Yes.

*Q.* Did that occasion any quarrels among you?

*A.* Never.

*Q.* Do



Q. Do you recollect a song, with a chorus that began, Plant, plant the tree?

A. I do.

Q. Be so good as read that (*giving a paper to the witness,*) and tell me whether you ever heard the prisoner sing that song?

Mr. Adam. Does your Lordship think this is evidence?

Lord Chief Justice Eyre. I do not know whether this song will amount to any thing; he has said he never heard the prisoner say any thing about the King.

A. I do not recollect whether that is exactly the song he sung.

Mr. Attorney General. I offer it both to prove the fact; the witness has already sworn of singing republican songs, and offer the matter of it as part of the prisoner's declaration upon that very subject.—Read it through, and tell me whether you have any doubt about it?

A. I have no doubt.

Mr. Attorney General. Then I offer this as evidence.

[ *It was read by Mr. Shelton.* ]

- " See, Britons, see, that rising beam,
- " The Eastern skies adorning;
- " 'Tis freedom's sun begins to gleam,
- " And wakes a glorious morning.
- " Now despotism from France is chas'd,
- " And church illusions vanish'd,
- " Ne'er let them in our isle be plac'd,
- " But far from Britain banish'd.

CHORUS.

- " Plant, plant the tree, fair freedom's tree,
- " Midst danger, wounds, and slaughter;
- " Each patriot's breast its soil shall be,
- " And tyrants blood its water.

" They

" They come, they come, see myriads come,  
" From Gallia to invade us;  
" Seize, seize the pike, beat, beat the drum,  
" They come, my friends, to aid us.

" Let trembling despots fly the land,  
" To shun impending danger;  
" We'll stretch forth a fraternal hand,  
" To hail each glorious stranger.

" CHORUS, Plant, plant the tree, &c.

" That palace which for ages past,  
" To despots was appointed;  
" The sovereign people claim at last,  
" For they're the Lord's anointed.

" The useless Crown which long adorn'd,  
" The brows of Royal Ninnies;  
" To nobler purposes is turn'd,  
" Coin'd into useful guineas.

" CHORUS, Plant, plant the tree, &c.

" Those high nicknames Lord, Duke, and Earl,  
" Which set the croud a gazing;  
" Are priz'd as hogs esteem a pearl,  
" Their patents set a blazing.

" No more they vote away our wealth,  
" To please a King, or Queen, Sir;  
" Now glad to pack away by stealth,  
" To 'scape the Guillotine, Sir.

" CHORUS, Plant, plant the tree, &c.

" Our Commons too who say forsooth,  
" They represent the nation;  
" Must scamper East, West, North, and South,  
" To 'scape our indignation.

" Their

" Their Speaker's mace to current coin,

" We presently shall alter ;

" And ribbands late so gay and fine,

" We'll change for each an halter.

" CHORUS, Plant, plant the tree, &c.

" On holy mummeries our boys,

" Contemptuously shall trample ;

" And yonder dome that props the skies,

" Shall turn to Reason's temple.

" Then ca ira, each corps shall sing,

" To cheer the broken hearted ;

" And Priestcrafts bells no more shall ring,

" To thund'ring guns converted.

" CHORUS, Plant, plant the tree, &c.

" Behold the Bank its specious trash,

" Unworthy our regarding ;

" Mere paper wealth, ideal cash,

" Whole pounds not worth a farthing.

" The Stocks like vapours on the hills,

" Shall vanish from our sight, Sir ;

" And Abraham Newland's swindling bills,

" May cover paper kites, Sir.

" CHORUS, Plant, plant the tree, &c.

" Those Lawyers see, with face of brags,

" And wigs replete with learning ;

" Whose far fetch'd apophthegms surpass,

" Republicans discerning.

" For them to ancient forms be stanch,

" To suit such worthy fellows ;

" Oh, spare for them one legal branch,

" I mean, reserve the gallows.

" CHORUS, Plant, plant the tree, &c.

P

" 'Tis



" 'Tis done, the glorious work is done,  
" Rejoice with one another;  
" To plowshares beat the sword and gun,  
" For each man is your brother.  
" Detested war shall ever cease,  
" In kind fraternization;  
" For all is harmony and peace,  
" And all the world one nation.

" CHORUS, Plant, plant the tree, &c."

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*Mr. Attorney General.* Was the chorus sung at the end of each of these verses—Plant, plant the tree, &c.?

*A.* I do not recollect whether it was or not.

*Q.* You remember the chorus?

*A.* I remember the chorus perfectly well.

*Q.* Perhaps you may have a recollection of some other songs sung by the prisoner?

*A.* I do not immediately recollect any.

*Q.* Favour me with casting your eye over that song? (*Shewing the witness another paper.*)

*A.* I do not recollect his singing this song.

*Mr. John Cleverton,*

Re-examined by *Mr. Adam.*

*Q.* Can you take upon yourself, positively, to swear, that these were the words of the first song that he sung?

*A.* No, I cannot; I never heard him sing it above once or twice, and I paid very little attention to it.

*Q.* And for ought you know many of the verses may have been transposed?

*A.* They might, but I cannot say.

*Mr. Anthony Collins, (sworn.)*

*Examined by Mr. Adam.*

Q. Were you in the prison-ship, at Brest, at the time Mr. Crofsfield was there?

A. I was; I commanded one of them.

Q. I understand that they were English ships, and they had put English Captains on board to command?

A. No, we were cartels, we were detained there for a long time; they thought proper to convert the ships into prison-ships, and in consequence of that we were filled full of them.

Q. Was Mr. Crofsfield one of the prisoners on board?

A. He was; I heard there was a medical man on board one of the other ships, he was not then on board my ship, and I made application to the commandant, and he granted me the liberty to invite him to come on board, to take care of the sick prisoners, which he did with great care and attention; and I am confident he saved fifty or sixty lives, from his great care and attention, during the time he was on board he lived with me in the cabin, along with several other gentlemen.

Q. Do you recollect the names of these gentlemen?

A. There were two brothers of the name of Byron, there was Captain Lambton, Captain Taylor.

Q. Do you know whether the Byrons are now in England?

A. One of them is now at Portsmouth.

Q. Was he a Captain of a ship?

A. No, a passenger.

Q. What rank of life is he in?

A. A young man.

Q. And a person in the same station of life that you yourself are?

A. Yes.

Q. Do you know where Mr. Taylor is now?

A. No.

Q. Captain Lambton?

A. He is now at Newcastle.

Q. Do you remember any more gentlemen that were on board ?

A. Not at that time.

Q. Did you live in great intimacy with Mr. Crossfield ?

A. We did so.

Q. You say he has a good deal of skill in his profession ; but independent of that, what sort of character is he ?

A. I did not know the man before.

Q. Did the glass go pretty freely round ?

A. Our situation was such, that for want of better employment it did so.

Q. Did Mr. Crossfield ever say any thing to you about any plot he was concerned in ?

A. During the time he was in my company, I solemnly protest, that not a word of the kind was ever mentioned about plots, or any thing against his Majesty or the Government.

Q. Do you know an old man of the name of Winter ?

A. I do, he was one of the mess at that time whenever he chose to come.

Q. Do you remember any stories of Winter's telling ?

A. Oh, yes, a number of silly foolish things he used to tell.

Q. Do you recollect any particular story about any animal that he caught ?

A. Oh, a number of foolish stories of that kind, I remember several, one was of his catching the devil in the shape of a hare, and such ridiculous nonsense as that.

Q. Did he say, that he took this hare for the devil ?

A. He certainly did ; and was very much displeased when we contradicted him.

Q. You take upon yourself to swear, that he used to say that this hare was the devil ?

A. Yes, that he believed it to be so ; and not only that, but he told another story of the same kind——

Q. He was, in short, a man who dealt in the marvelous ?

A. He did ; and he was the common laughing stock of the whole ships crew—Indeed, from his own conversation I believed



he was somewhat flighty at times—I understood that he had lost a good deal of property, whether it was from that, or his imprisonment, or one thing or another, but I really believe at times he was—in short the sailors laughed at him. I have known him myself, walking the deck, and talking to himself a whole night, I have got up frequently and seen him walking and talking to himself the whole night; he was a man that slept very little, he was the last in bed and the first up.

Q. Was not Winter a person you used to make a sort of butt of?

A. He was.

Lord Chief Justice Eyre. He said he was the common laughing stock of the ship.

Mr. Adam. Had you any conversation with Winter upon the subject of Mr. Crossfield?

A. No, never any private conversation of any sort, for he was a man not of the cast for me to converse with.

Mr. Anthony Collins,

Cross-examined by Mr. Law.

Q. You was particularly intimate with Crossfield?

A. Yes, as living with him.

Q. He would probably tell you the reason of his leaving England?

A. He never did; only mentioning his pecuniary circumstances that they were deranged—in short, he had no money, and has asked me for a little.

Q. He never mentioned a word of what made him leave England rather suddenly?

A. Nor that he had left England suddenly; only that he was taken in a ship going to the South Seas.

Q. As the grog went about pretty freely, I take for granted you had songs?

A. We sung of course to pass the time away.

Q. Were the songs orderly, favourable to good Government, or what?

A. I do not recollect any songs against the Government.

Q. You never happened to hear him sing a song, the chorus of which was

“ Plant, plant the tree, fair freedom’s tree,  
“ Midst danger, wounds, and slaughter;  
“ Each patriot’s breast, its soil shall be,  
“ And tyrants blood its water.”

You never heard him sing such a song as that?

A. I do not recollect any thing of the kind.

Q. He was quite another sort of man?

A. Yes.

Q. Probably his usual song was—God save the King?

A. I do not recollect that.

Q. Rule Britannia?

A. That of course was sung.

Q. Have you heard him sing, Rule Britannia?

A. I cannot say I have heard him sing that, but in the company we have done it.

Q. But you never heard him sing any song of a seditious, or bad tendency?

A. I have not.

Q. Nor you never had any communication from him of the reason of his leaving England?

A. No.

Q. Did you happen to know by what name he was mustered, when he came for England?

A. I was informed he had put down a different name.

Q. Did not you think that odd?

A. From his circumstances being in a bad state in this Country, I supposed he did not choose to be known.

Q. You understood it to be to protect himself from any enquiries of his creditors; and not to screen himself from any enquiries of Government?

A. Yes.

Q. And his behaviour was uniformly that of an orderly and good subject?

A. Yes.

A. Yes.

Q. And you was with him every day from April to August?

A. Yes.

Q. He was rather remarkable for the decency of his conduct, a man you would rather describe as eminent for his loyalty?

A. As to his political principles he never said any thing in that respect, except reprobating the war that it was an unjust one.

Q. But in other respects he was a man of eminent loyalty?

A. Yes.

*Mr. Anthony Collins,*

Re-examined by *Mr. Adam.*

Q. You sung songs to divert the miserable time you passed in captivity?

A. Yes.

Q. Did Mr. Crossfield seem miserable as well as the rest?

A. He did at those times and moments when he was serious—I likewise have heard him say that he had offers from the Commandant to stay in the Country to superintend the hospital, which he thought proper to refuse, as wishing to return to his own Country—he told me that not only once but several times, to superintend an hospital called Landernau, which he said upon consideration he refused, as he wished to come to his native Country.

*Mr. Law.* Were you by when he said that every thing was settled to his satisfaction?

A. He spoke French, and of course I did not understand him.

Q. Did you ever hear him say what had been settled between him and the people at Brest, which was so much to his satisfaction?

A. Nothing at all.

Q. You never heard him say any thing had been settled to his satisfaction?

A. No.

Q. You did not hear what terms were settled between them



at the time of his coming away, that induced his coming back to England?

*A.* No; when the prisoners were to be released he seemed to be rejoiced.

*Lord Chief Justice Eyre.* Did you happen to know Mr. Cleverton?

*A.* I had some knowledge of him.

*Lord Chief Justice Eyre.* Was he ever on board your ship?

*A.* Not more than once or twice, he did not stay on board—he was on board one of the other ships—he was I think part of the time at the hospital sick.

*Elizabeth Smith, (sworn)*

*Examined by Mr. Adam.*

*Q.* Are you a married woman?

*A.* I was; but I have been a widow eight years.

*Q.* Where do you live?

*A.* No. 17, Great Hermitage-street, Wapping.

*Q.* How long have you lived there?

*A.* I have lived about eight years in that house.

*Q.* How long did you live in the house you were in before?

*A.* About seven years.

*Q.* Was that in the same part of the town?

*A.* In Red Lion-street, Wapping.

*Q.* So that for the last fifteen years you have been a constant resident in Wapping, in two houses?

*A.* Yes.

*Q.* Do you know the prisoner Mr. Crossfield?

*A.* Yes, I do.

*Q.* How long have you been acquainted with him?

*A.* Five years.

*Q.* Have you seen much of him during that time?

*A.* Yes; he has been very often to and fro to my house.

*Q.* Have you seen enough of him to know his disposition or character—Is he a man of levity, or a very serious man?

*A.* He is a man of levity.

*Q.* Is

Q. Is he a man of a severe harsh temper?

A. No; quite the reverse.

Q. Do you know Captain Clarke who was Captain of the Pomona?

A. Very well, he lodged with me.

Q. How long have you known Captain Clarke?

A. About two years.

Q. Do you know a person of the name of Le Bretton?

A. Yes.

Q. How long have you known that person?

A. He was before the mast with Captain Clarke, and so he used to come to the house—Captain Clarke had my first floor—Captain Clarke and his wife boarded in my house.

Q. Do you remember Mr. Le Bretton coming to your house at any time to see Captain Clarke, since Captain Clarke returned from France?

A. Yes.

Q. About what time was that?

A. I cannot exactly say; but I believe about ten days after Captain Clarke left my house to go to Yarmouth, coming from the prison ship.

Q. Were you in company with those persons at that time?

A. Le Bretton called upon me and told me I might expect Captain Clarke that night, for he had been examined at Guildhall or somewhere, and he had wrote for him.

Q. Did Captain Clarke come?

A. He did.

Q. Were you present with Captain Clarke and Le Bretton?

A. Yes.

Q. What did he say to Captain Clarke—did he ask him whether he had ever heard this, or no?

A. Le Bretton said he had heard Mr. Crossfield describe a gun to him in the presence of Captain Clarke, and he said to Captain Clarke you was present at the time—Le Bretton said he had heard Mr. Crossfield describe it, and that Captain Clarke was present at the time—Captain Clarke said he never heard it.

Q. Did any thing else pass upon that subject between you?

A. Le

*A.* Le Bretton said several times he hoped he would hang him.

*Q.* You have known Mr. Crofsfield I think you say these five years—did he ever lodge at your house?

*A.* Yes.

*Q.* Under what name did he lodge at your house?

*A.* Always under the name of Crofsfield.

*Q.* At what particular time did he lodge at your house?

*A.* He has lodged at my house at three different times.

*Q.* Name the times, if you recollect them?

*A.* About three years ago—the last time that he lodged at my house was about a month before Christmas—it was in the beginning of February when he joined Captain Clarke's ship at Portsmouth—he dined on Christmas day 1794 with Captain Clarke at my house, that was the day Captain Clarke left my house, but Mr. Crofsfield did not join the ship at Portsmouth for five weeks after that,

*Q.* Where was he all that time?

*A.* In my house—he used to go to 'Change with Captain White, a gentleman who lodged with me at that time.

*Q.* Did he use to go about with Captain White and other gentlemen?

*A.* Yes; to the 'Change and different places.

*Mr. Attorney General.* You saw him there?

*A.* I did not see him there, but he used to go and return with the gentlemen.

*Mr. Adam.* He used to go about without any concealment?

*A.* I never knew of any concealment.

*Q.* Were you present when any thing passed between him and Captain Clarke respecting his going to the South Seas?

*A.* Mr. Crofsfield came into the house one day and Captain Clarke was speaking to a gentleman to recommend him a surgeon, Mr. Crofsfield enquired where he was going, and said perhaps he might go with him; that is all that I know.

*Q.* What is your opinion of Mr. Crofsfield's general character?

*A.* He is a very good natured man; that I am sure would hurt nobody.

*Q.* Did



Q. Did Le Bretton say any thing further about Captain Clarke's having heard this matter that passed with respect to the plot?

A. No.

Q. Did he press Captain Clarke upon it?

A. He said two or three times that he was present.

*Elizabeth Smith,*

Cross-examined by *Mr. Wood.*

Q. Did Mr. Crossfield lodge at your house before he went down to Portsmouth?

A. He lodged at my house two months before.

Q. And up to the time when he went down to Portsmouth?

A. Yes; he went sometime the beginning of February.

Q. You endeavoured to learn from Le Bretton and Dennis what they had sworn before the Privy Council?

A. No, I never asked them a question, nor I never heard Dennis say any thing, but I heard Le Bretton say that to Captain Clarke.

Q. But have not you asked Le Bretton and Dennis what they had sworn before the Privy Council?

A. No, I never did; and he won't say that I am sure.

Q. Have not you endeavoured to persuade Le Bretton to be very favourable to the prisoner?

A. No, never.

Q. You never applied to him for that purpose?

A. Never.

Q. Nor never said a word to him upon that subject?

A. I never did.

Q. Let me put you in mind—did not you tell him that the truth was not to be spoken at all times?

A. I never did.

Q. Remember you are upon your oath?

A. I do, and I am speaking the truth.

Q. And you never said any thing to that effect to him, nor to Dennis?

A. No, to neither of them.

Q. They

*Q.* They may be called, and I wish you would recollect yourself?

*A.* They may, and they will clear me if they are.

*Q.* Then you say you never interfered with them to be favourable to the prisoner, nor said that the truth was not to be spoken at all times, nor to that effect?

*A.* No, never; I had never seen them.

*Q.* You had never seen them?

*A.* Not since that time, they were constantly about the house then, and that was the time to speak of it.

*Mr. Adam.* I am going to call a witness for the purpose of proving that Upton is now living.

*Lord Chief Justice Eyre.* We have had some evidence with respect to Upton—Unless you go the length of proving that Upton is alive and is kept away by one side or the other, no observation in my judgment arises upon it in this case—it will remain an uncertainty whether he went away to avoid being now examined, and what were his inducements if he did so; or whether they were inducements that moved from the side of the prosecution, or from the side of the prisoner; or whether it was purely the effect of his own feelings—Now all that being left perfectly uncertain, as you do not open that you can prove that he is kept away; it seems to me as if that enquiry was really quite beside this case.

*Mr. Adam.* Will your Lordship permit only for the sake of stating the ground——

*Lord Chief Justice Eyre.* If you think it right to call these witnesses, having admitted some evidence on the other side, which perhaps was rather admitted by way of anticipation than otherwise, I certainly shall not stop you.

*Mr. Attorney General.* There is one circumstance material for my learned friends to be aware of, as in the nature of the thing this is evidence respecting a fact which has taken place since a copy of the indictment, and the names of the Jurors, and of the witnesses were delivered to the prisoner; this point must arise, and it is a new point in the history of these sort of trials, namely, whether I am not at liberty to call witnesses to prove the death of  
Upton,

Upton, which is a fact that has happened since the list of witnesses has been delivered to the prisoner—I apprehend I can call these witnesses—I take for granted Mr. Adam will not make an objection.

*Lord Chief Justice Eyre.* Witnesses whose testimony arises from the evidence on the other side, can hardly be supposed to be within the meaning of the Act of Parliament; because by no possibility can you know beforehand that you should need such evidence.

*Mr. Adam.* I wish to state it in such a manner as to have it very distinctly understood—I am perfectly satisfied of this, and I am really anxious, though it may be a little out of course to declare that I am persuaded every person concerned in this prosecution throughout the whole, is perfectly incapable of doing such a thing; and I should be extremely sorry if any thing that I state to the Jury, or now address to your Lordship, could possibly attach my name to the supposition of such a thing existing, and therefore most undoubtedly I cannot avail myself of that ground—namely, that I bring this evidence to prove that there have been measures taken to prevent Upton's coming here; I certainly cannot state that to be the ground, because every conviction and every feeling that I have, is perfectly to the contrary—then it reduces itself exactly to this, whether your Lordship thinks strictly speaking it is evidence that ought to be admitted or not, I certainly will not give your Lordship the trouble of discussing the question.

*Lord Chief Justice Eyre.* You do very rightly, because examining witnesses whose evidence has not a clear application to the cause only puzzles the case.

*Mr. Adam.* In a case of this sort your Lordship will forgive me for offering this evidence.

*Lord Chief Justice Eyre.* I have no objection to every thing being stated and sifted, and giving you all the assistance I can to enable you to produce every thing you ought to produce.

*Mrs.*



*Elizabeth Watson, (fworn)*

Examined by *Mr. Adam.*

Q. Where do you live?

A. I did live in Dyer's Buildings.

Q. Did Mr. Crofsfield, the gentleman at the bar, live with you?

A. He lodged in my house.

Q. Under what name did he lodge in your house?

A. By the name of Crofsfield.

Q. You always knew him by that name?

A. I did.

Q. Did he lodge in your house in September and October 1794?

A. He came on the 26th of July 1794, and continued as near as I can remember about two months.

Q. Of course you knew a good deal of his manner and way of life—was he a man that was remarkably careful of his papers or any thing?

A. No, he had nothing locked up while he was in my house.

Q. Did he pass by his own name, and go about every where publicly?

A. Yes.

Q. How long have you known him?

A. I never knew any thing of him till he came to lodge in my house.

Q. When did he leave your house?

A. I cannot ascertain the day—he came about the end of September, or the beginning of October.

Q. He did not come back again to lodge with you?

A. No.

*Elizabeth Watson,*

Cross-examined by *Mr. Attorney General.*

Q. Did he visit you afterwards?

A. No; I have never seen him since he left my house.

Q. He did not pay you any visit at any time about Christmas, January, or February, or afterwards?

A. He did not.

Q. Do you recollect whether enquiries were made at your house about him?

A. No enquiries were made after him after he left my house.

*Margaret Beasley, (sworn)*

Examined by *Mr. Adam.*

Q. Do you know Mr. Crossfield?

A. I have known him about four years.

Q. Have you known him intimately?

A. Yes.

Q. What is your opinion of his character?

A. I never knew any thing against his character.

Q. Do you know whether he is a humane good natured man?

A. I have always understood so, and always heard so.

*Mr. Wyld, (sworn)*

Examined by *Mr. Adam.*

Q. Do you know Mr. Crossfield?

A. Yes.

Q. How long have you known him?

A. About three years.

Q. What is your opinion of his character?

A. I always thought him of a good character.

Q. For his good nature and humanity?

A. Yes; I always thought him a man of humanity.

Q. What is your profession?

A. A surgeon.

Q. Where do you live?

A. In the Kent Road.

*Mr. Simon Wilson, (sworn)*

Examined by *Mr. Adam.*

Q. What are you?

A. A surveyor in Dorset-street.

Q. Do

Q. Do you know Mr. Crofsfield?

A. Very well.

Q. How long have you known him?

A. Ever ſince I remember any thing.

Q. Do you know him ſufficiently to know his character?

A. Yes.

Q. What is your opinion of his character?

A. I always thought him an exceeding good man.

Q. Incapable of committing any crime?

A. I never thought he would commit the leaſt crime.

Q. He is a humane man?

A. Very much ſo.

*Mr. Hepburn, (ſworn)*

Examined by *Mr. Adam.*

Q. What are you?

A. A ſurgeon.

Q. Where do you live?

A. In Great Hermitage-ſtreet.

Q. How long have you known Mr. Crofsfield?

A. Four years.

Q. Have you known him intimately?

A. I have been often in his company, I attended the family where he lodged.

Q. What is your opinion of his character?

A. A very eaſy good natured man, extremely ſo; too good natured.

*Mr. Law.* We will call Dennis and Le Bretton again.

*Thomas Dennis, (called again)*

Examined by *Mr. Law.*

Q. Were you in Court when Mrs. Smith was examining juſt now?

A. I was not.

Q. You have not heard what ſhe ſaid?

A. No.

Q. You know Mrs. Smith?

A. I



*A.* I do.

*Q.* Have you had any conversation with her about Crossfield?

*A.* Not since I was first examined before the Privy Council?

*Q.* Did she ever make any enquiries of you as to what you had said on your examination?

*A.* She did.

*Q.* Are you sure of that?

*A.* Yes, I am confident of it.

*Q.* Did she seem in any manner anxious to know what you had said upon that examination?

*A.* Quite so; she asked me what I knew about Crossfield, and she said she hoped I would not declare any thing that would hurt him—I dined with her, and very warm disputes there were after dinner, there were three or four Captains there and myself; and she said she would say any thing to save him, and not to hurt him.

*Q.* Was there any thing said about whether you should or not say truth at all times?

*A.* Not before me.

*Mr. Adam. (to Elizabeth Smith)* Is what this man says true?

*A.* I never examined him as to what he had said.

*Q.* Did you ever ask him to do what he says you asked him?

*A.* I never asked him to favour Mr. Crossfield.

*Dennis.* Captain Smith, who dined there, got into a very warm dispute, and said Mrs. Smith you ought to be ashamed of yourself for saying such a word.

*Mr. Law.* Who is that Captain Smith?

*A.* A gentleman in the African trade, he lodged with this good lady, at least I learned so when I dined there.

*Lord Chief Justice Eyre.* Who were the other gentlemen there at dinner at that time?

*A.* Captain Clarke, Captain Smith, and a young gentleman that had apartments there, I believe he was a wharfinger; I do not know his name.

*Mr. Law.* As I find Le Bretton is not here, we will not detain the Court, but with your Lordship's leave we will examine him after my learned friend has summed up the evidence for the prisoner.

Q

MR.

MR. GURNEY.

Gentlemen of the Jury,

The evidence for the prisoner being now closed, it becomes my duty to address you on his behalf; and I need scarcely state to you the extreme awfulness of that duty. Even my learned friend, Mr. Adam, when he rose to address you, felt himself most deeply affected by the circumstance of standing up, for the first time, in defence of a person accused of so great an offence; what then must be my feelings, who am far from having the advantage either of his ability or of his experience? I, however, feel myself encouraged by the consideration, that the able and eloquent speech which he delivered must have made such an impression upon your minds as to render it less necessary for me to solicit your attention, or to detain you, for any length of time; and to make it less likely that the prisoner should suffer, as I fear he must suffer, by the inability of the advocate who has now the honour to address you.

I confess, Gentlemen, there is one burthen, from which in this case I feel relieved, namely, that there is not any question of law by which your minds can by any possibility be entangled. It is purely a question of fact upon which you are to decide; that is to say, whether the fact has been substantiated by legal proof, so as to call upon you to find the prisoner at the bar guilty of High Treason.

Gentlemen, it has been correctly stated to you, that the crime of High Treason is the most heinous and the most atrocious crime which it is in the power of man to commit. It is so inasmuch as it aims not only at human life, but at the life of the Sovereign, whose death might plunge the Country into a state of anarchy and confusion, and consequently bring upon it incalculable miseries. The life of the King being of such high import to Society, the law has provided peculiar protections for his person; it has enacted, that even the *compassing* his death shall be equal to that which in other cases would be the completion of the crime—

the

the actual murder. By the act of 25 Edward III. which is the statute upon which this indictment is founded, Treason is defined to be—"when a man doth compass or imagine the death of our Lord the King, and thereof be provably attainted of open deed by people of his condition."

Thus far the law had provided, and wisely provided, for the protection of the person of the King from lawless violence; in succeeding times the legislature was taught, by melancholy experience, that another important consideration remained, namely, to protect the person of the subject from unrighteous violence under the forms of law; it therefore provided fences to guard the subject from unfounded accusation of High Treason. A subsequent statute has enacted, that a person shall not be convicted of High Treason unless there are two witnesses to one overt act, or one witness to one overt act and another witness to another overt act, of the same species of Treason. The reason of the law was, that the Legislature, in prosecutions for High Treason, carried on, as they always are, by the Government of the Country, had witnessed instances in which individuals were overborne by the power and the influence of that Government; it was, therefore, necessary that a Jury should have, in a case of so great magnitude as this, the satisfaction arising from the concurring testimony of two witnesses to some one overt act, or one witness to one overt act and another witness to another overt act, of the same species of Treason.

Before I state to you, Gentlemen, what the question is which you have to consider, give me leave to state, in one word, what it is you have *not* to consider. The question is *not* whether there was or was not probable ground for this prosecution. The question is, *whether the Attorney General has substantiated the charge of High Treason, according to the strict requisites of the law.* This statement of the question you will perceive the necessity of keeping in your minds, from some observations I shall have occasion to make hereafter.

Before I enter upon the examination of the evidence which has been given, I would beg leave to remark on the improbable nature of the case attempted to be made out on the part of the



Crown. It is surely no immaterial consideration, whether the charge which is brought against the prisoner is attended with probability or with improbability; because, undoubtedly, evidence of a less weighty nature will substantiate a probable charge than will substantiate an improbable charge. Now, upon viewing the whole of this case together, I will venture to say, that, from the beginning to the end, it is attended with every improbability that can attend any account, of any human transaction, or any pretended human transaction. Among other things, let it be considered, what motive all these persons could have who, are affirmed in the indictment to be conspirators. In former assassination-plots, which have become the subject of judicial enquiries, there was in a neighbouring Kingdom a competitor to the throne, ready to assert his pretensions by force of arms; and there were in this Country numerous adherents to the dethroned prince, ready to second and to support his pretensions; therefore, there was a very obvious purpose to be attained by the persons who were conspiring to assassinate the reigning King, namely, to remove him, in order to place the exiled monarch upon the throne.—Happily for this Country, that is no longer the case. We have now no disputed throne, his Majesty reigns by unquestionable right, and reigns, too, in the hearts of his subjects.

Gentlemen, there is another observation upon the improbability of the charge which may not be unworthy your attention.—It is said this assassination was to have been effected in the theatre at Covent-garden. Is it at all conceivable that any persons could perpetrate a crime so horrid in that public place without necessarily becoming the victims of their own guilt? Is it reasonable to suppose, that any persons could be so mad as to imagine that they could perpetrate that crime and escape the punishment which they so well deserved? It is totally impossible they could entertain such a hope. You will, therefore, consider how strong and powerful a motive ought to be proved upon persons who are asserted to have engaged in a design, the execution of which must have been attended with the immediate loss of their own lives.

I will now, Gentlemen, submit some observations to you  
upon

upon the evidence; and I feel relieved from a great part of the duty that would otherwise have been incumbent upon me, by the observations which have been already so forcibly made by my learned leader; and, therefore, if in going over the evidence for the Crown I should not state it to you with great particularity, that will be the reason; and you will not, therefore, imagine that I have any wish to withdraw any part of it from your attention: indeed, if I had any such wish, I know it would be vain, because I am to be followed by the learned Attorney General in reply. The learned Judge, too, who presides, will sum up all the evidence to you with the greatest accuracy.

In the first place, you have the evidence of Dowding, Flint, and Bland, who state the conversations that passed between them and a person of the name of Upton, whom you have heard so much of, Palmer, whom you have seen; and some third person. Not one of these witnesses, however, has identified the prisoner to be that third person. You will observe, farther, that, in all these conversations, Mr. Upton is stated to be the person who made the enquiries; Mr. Upton is the person who is supposed to have carried on something like a negociation with each of them; though, in point of fact, nothing was done upon any of these enquiries, no instrument was made, and, till you come to the evidence of Hill, it is not stated that any thing was done in consequence of these enquiries and these directions.

You come then to the evidence of Mr. Hill, who states, that three persons came to him, Upton, Palmer, and a third person; which third person, he, too, has not identified to be Mr. Crossfield: that he received instructions from Upton; and that that third person, whoever he was, he thinks assisted Upton in giving the directions.

Then you have the evidence of Mr. Palmer, which is to connect Mr. Crossfield with the whole of this transaction. Mr. Palmer states, that himself, Upton and Mr. Crossfield, were the persons who called at these brass-founders, and were the persons who likewise called upon Mr. Hill.

You will recollect, Gentlemen, that Mr. Palmer was a witness produced by the Crown; he was a man, therefore, whom

the Crown tendered to you as deserving of your credit; for if he was not deserving of your credit, he was not a witness to be produced by them in this Court. You will recollect that the identity of Mr. Crossfield is proved only by Mr. Palmer, and therefore I should suppose that the Crown will not state to you that Mr. Palmer is not deserving of your credit, because the moment his credit is destroyed this cause is out of Court; for they have not proved the identity of Mr. Crossfield by any person but Palmer. Therefore, I am perfectly indifferent as to Palmer's credit; I care not whether he stands before you as a man entitled to the fullest credit, or as a man totally unworthy of your belief. I am perfectly indifferent upon that subject; because if he is deserving of credit, then the whole of his evidence must be taken to be true. And he has stated, that the calling upon Upton was accidental; he has stated, that he called upon Upton for a watch of his, which Upton was mending; that upon mentioning to Upton which way Mr. Crossfield and he were going, Upton said he was going the same way, and would accompany them; that Upton was the man who spoke to every person upon whom they called: he has not the least memory of any one part that either of them took in the conversations except Upton; and, therefore, if Palmer is a person of credit, then one of those persons who is supposed to be a witness to prove some one of the overt acts charged in the indictment, is a witness who does not prove any one of those overt acts.

You recollect how this is supported on the other hand by Hill, if it is to be called support. Hill states, that he received instructions from Upton; and he thinks that a third person, whom he did not know, assisted in giving some part of the directions. Is this to be called two witnesses to an overt act?—Is this that concurring testimony of two witnesses to an overt act which the law requires before a prisoner can be provably attainted of open deed? It certainly is not. One witness proves something like a fact, which fact the Crown attempt to colour by subsequent evidence, and the other witness fixes identity but proves no facts; and if this overt act is not proved, I beg to ask what overt



act upon this indictment is proved? Not one. This is the only overt act to which the evidence for the Crown can be applied.

The first overt act charged in the indictment is, that the prisoner, together with Le Maitre, Smith, and Higgins, the other persons named in the indictment, conspired to procure and provide a certain instrument, for the purpose of discharging an arrow, and also a certain arrow, to be loaded with poison, with intent to discharge the said arrow, so loaded with poison, by means of the said instrument, at and against the person of the King, and thereby to kill him. Now, you cannot but have observed, that, although this is the main and principal overt act—although it is that which first presents itself to the eye upon reading the indictment, yet the Crown have not affected to give a single tittle of evidence in support of it from the beginning to the end of their case.

Gentlemen, you must have supposed, from hearing the indictment read, that you were to have evidence of a conspiracy of the prisoner with those other persons to procure and to provide this instrument; and yet you have heard no more of those persons upon the evidence for the Crown than if they had never existed from the beginning of time to the present moment. The first overt act, therefore, is not even attempted to be proved by the Crown.

The second is the overt act upon which I have already observed, and to which alone the evidence for the Crown applies; that is, the employing Hill to prepare two pieces of wood, to be used as models for the making certain parts of the instrument before mentioned, and delivering to Hill drawings, as instructions for making such models.

The third overt act charges the prisoner, together with the other three, with deliberating on the killing of the King, by the means and instrument aforesaid, and how and where it might most effectually be accomplished. Of that, too, you have not heard one single syllable in evidence.

The fourth is, employing Upton to assist in making the instrument; and for that purpose delivering to him a paper with

drawings, as instructions for making the instrument, and also two pieces of wood as models for the instrument.

Gentlemen, as you have not seen Mr. Upton—from what cause it is not now my business to enquire—but as, in point of fact, you have not seen Mr. Upton, you have had no evidence given, or affected to be given, either of the prisoner at the bar or of the other persons who stand charged with him in the indictment having employed Upton for that purpose, or having delivered to him any drawings for that purpose.

There remains, then, only another overt act, which is, delivering to Upton a metal tube, to be used by him in the making of the instrument, and as a part of the instrument.

Now, Gentlemen, what proof have you of that overt act? All the proof you have is, that, in the possession of Upton, a metal tube, which has been produced, was found. Unquestionably the metal tube was in the possession of Upton. But after the evidence you have heard respecting Upton—after the evidence, too, which you have not heard respecting Upton, I mean, because you have not seen or heard Mr. Upton himself—is it to be inferred, that, because a metal tube was in his possession, that, therefore, the prisoner delivered that metal tube to him to be employed for that purpose? I am sure a presumption so violent, so totally unsupported by all the evidence, is not a presumption that can be seriously and gravely stated to you on the part of the Crown.

There is another set of overt acts, which differs from this only in the description of the instrument; I shall not detain you, therefore, with any observations upon them.

I believe it is unnecessary for me to make more than one or two observations further upon that which is the original evidence in support of this indictment. You must have anticipated me in observing, that it was not so very remarkable that Mr. Upton should be going to a brass-founder's, or that he should be going to a turner's, for the purpose of ordering any instrument to be constructed which was not in his ordinary business as a watch-maker, because it has been proved that he was, likewise, an ingenious mechanic in other branches; that he had

in his shop an electrical machine of a curious construction, of his own invention, that he was extremely proud of it, and you observe when he was asked by Hill the purpose for which the models were wanted by him, he said they were for the purpose of an electrical apparatus,

Leaving then, Gentlemen, all that evidence which merely states certain circumstances respecting Mr. Crofsfield calling with Upton upon Hill, and those circumstances proved, as I submit, only by one witness; because not one of the other witnesses, excepting Palmer, speaks to the identity of Mr. Crofsfield; unless there was something more in the case, it would unquestionably be impossible for you to conceive by what means that evidence could be applied to the support of the indictment upon which you have to decide.

But the Crown state that they can give corroborative evidence—evidence of conversations or of confessions of Mr. Crofsfield which completely prove the traitorous purpose with which he did those acts. Now, evidence which is corroborative, or in other words evidence which is auxiliary, can only weigh in your minds so much as to produce a conviction, when there has been previously some one overt act established according to the requisites of the Act of Parliament by two witnesses; or two overt acts, one proved by one witness, and another proved by another. The superstructure cannot be raised until the foundation for it is laid.

Gentlemen, of all evidence that is produced in a Court of Justice, evidence of confessions, of conversations, of words, is the most loose and the most suspicious. I am sure the observations which my learned friend made to you upon that subject, and the very respectable authorities which he cited cannot fail to have made the strongest impression upon your mind. In addition to them, I will quote but one authority, and that is Mr. Justice Blackstone, who says, “ Words may be spoken  
“ in heat without any intention, or be mistaken, perverted or  
“ misremembered by the hearers. Their meaning depends  
“ always upon their connexion with other words and things.  
“ They may signify differently even according to the tone of  
“ voice



" voice with which they are delivered; and sometimes silence " itself is more expressive than any discourse." I will not add one word of my own to this admirable observation of that learned, that judicious, and that elegant writer upon the English law.

Gentlemen, you have the testimony of persons who were on board the prison-ships with Mr. Crossfield, who come to you to state, that he made certain declarations upon the subject-matter of the crime with which he now stands charged. Here too the case is attended with some of the strongest improbabilities that can exist, and with some circumstances extremely hostile to that case, which is attempted to be made out by the witnesses on the part of the Crown.

The first witness that you heard was Le Bretton, who stated himself to be boat steers-man, which, as I understand, is a situation of very inferior condition on board a ship, certainly such a man is not a suitable companion for the Captain and the Officers, or the Surgeon. Le Bretton has stated to you the words which Mr. Crossfield is supposed to have uttered, and which are conceived to prove the criminal purpose with which he did the acts that have been before alluded to. Le Bretton says, I have heard him say he was one of those that invented the air-gun to assassinate (which he called *assgnate*) to shoot his Majesty. I asked him, what it was like; he told me the arrow was to go through a kind of a tube by the force of inflammable air, he described the arrow to me like to one of our harpoons.

Now I should have supposed when the next witness Dennis was called, that he was to have proved the same declaration as Le Bretton, and most undoubtedly it was conceived he would prove the same. Dennis was more Le Bretton's associate than any other person. He was mate of the ship in which Le Bretton was a sailor, and consequently he and Le Bretton must more frequently have associated, and were more likely than any others to be in company together with Mr. Crossfield.

Here Gentlemen you have a fact which marks the danger of giving so much credit as is sought to be given to this testimony, because you must see that not two of these witnesses speak to the same declaration; Dennis tells you he heard Mr. Crossfield say, that

that his Majesty was to be assassinated at the Play House by a dart blown through a tube, and that he knew how the dart was constructed, it was something of the shape of a harpoon.

Then we come to Mr. Winter, and really after the very acute cross-examination of my friend last night, and after the observations which he made upon his evidence this morning, I am almost ashamed of re-calling your attention to his testimony except to remark that this too conspires, as every thing does conspire, to prove the extreme danger of admitting this sort of evidence as a proof of guilt. What does Mr. Winter say? He says that Mr. Crossfield told him, he actually had shot at his Majesty, but unluckily missed him; he said this was between the Palace and Buckingham House; that this was Crossfield's daily subject of discourse for five months, and that he once dipped his finger into some grog and marked upon the table how the arrows were made. Then there are some other declarations respecting what he hoped would happen in future.

Lastly comes Mr. Penny, and he states, that Mr. Crossfield said he was one of the ringleaders of the three that attempted to blow the dart at his Majesty in Covent Garden Theatre—stating the attempt to have been actually made, of which you have had no proof, and which there is no pretence to say ever had been made—and that if he arrived in England he would do the same again.

Although it does not come exactly in its place, I must remark the extreme absurdity of supposing that a person who is imagined to have confessed to this witness that he had actually committed the crime of High Treason, should say that if he ever came to England again, he would do—what? Not that he would commit any other species of High Treason—not even that he would commit the same species of High Treason in any other way—but that he would commit High Treason again in the particular way in which he is supposed to have committed High Treason before, when all the parties were in custody, when the whole scheme was known to the public, and which, therefore, was the last scheme that ever would have been thought of by any man in his senses, even if he had entertained those detestable designs.

But, Gentlemen, some observations arise upon the manner in which

which these witnesses have given their evidence, and upon the sort of intimacy which they must have had with Mr. Crofsfield. Le Bretton I am fure must have impressed you by the manner in which he gave his evidence, with an idea of his not being very favourable to Mr. Crofsfield. Le Bretton states, that in point of fact, Mr. Crofsfield and he did not associate on board the prison-ship; that he was in one mess, and Mr. Crofsfield in another, as must certainly have been the fact, considering the disparity of their conditions. He owns that he disliked Mr. Crofsfield, and it is extremely fair to suppose that that dislike was mutual. Yet it is to be imagined that of all the persons in that prison-ship, Le Bretton, a man of inferior condition, disliking him and disliked by him, was the man whom he should select as his confidant, with whom he should entrust his life, to whom he should actually confess, that he had been guilty of High Treason in attempting to kill the King!

Then you come to Dennis; he was the Mate of the ship, and he did associate with Mr. Crofsfield, because he was in the same mess; but when I asked him as to his intimacy with Mr. Crofsfield, he said he never to his knowledge exchanged fifty words with him all the time he was in France, and not many more than fifty before he arrived there. He too appears not to have been very favourably disposed towards Mr. Crofsfield, and I think it may be reasonably inferred that Mr. Crofsfield was not in habits of the greatest degree of sociability and intimacy with him. Yet it is supposed that Mr. Crofsfield has such a strange taste for confidants, that he first of all selects a common sailor with whom he did not associate, and whom he did not like; and next a Mate whom he disliked so much that, although Mr. Crofsfield is confessedly a man of levity, of rattle, and extremely talkative, he did not exchange fifty words with him in a six months captivity, during which they messed together every day.

Now I appeal to you, Gentlemen, whether it is possible to conceive of any evidence more improbable than that which has been given by Le Bretton and Dennis, who speak to declarations which could have been inspired only by the greatest intimacy and confidence, and which by their evidence would ap-

pear



pear to have existed, where there was every thing the most remote either from intimacy or confidence?

Mr. Crossfield was afterwards removed on board another ship, and there he finds Mr. Winter. Mr. Winter, you perceive, is a man rather stricken in years, and I think even upon his own evidence in chief, he must have appeared to you to be a man of as weak an understanding as ever made his appearance in a Court of Justice. What does he state? He states that Mr. Crossfield said, that he actually had committed the crime, not that he had conspired to commit it, not that he was concerned with others in any plot to commit the crime; but that he had actually committed an overt act of High Treason in shooting at the King. That is not either of the overt acts charged upon this indictment. The Crown did not think proper to state that as an overt act, because unquestionably it never did exist.

But what shall we say to Winter, when it appears upon his cross-examination, that from his silliness and credulity, he was the butt, the ridicule of every person in the ship, and that they were perpetually telling foolish stories to him in reply to his very very foolish stories to them? A more striking instance of the complete credulity of the human mind, of a mind which must be as near dotage as it is possible for any mind to be, (if it is not absolutely in a state of dotage,) is the story he told last night respecting the hare which he says jumped into his arms, which hare he threw into a kennel of hounds, and there that hare remained, like Daniel in the lion's den, unhurt for several hours. Is it possible to listen to any thing that a man says, whose mind can be so extremely weak as to allow of his telling that as a fact, which no man living could believe if it were stated by a thousand witnesses—that a hare could be thrown into a kennel of hounds, and that the dogs, after permitting it to remain among them unhurt for many hours, should then take it into their heads to chase it. Winter was asked a question which naturally arose from that—Whether he had not represented this hare to be the devil in the shape of a hare? No, he is positive he never said that. I think the probability of the case would have been, even

if we had had no evidence to prove the fact, that where a man was so weak as to believe it possible for a hare to remain unhurt in a kennel of dogs for several hours, he would be superstitious enough to suppose the hare was something supernatural. But it does not rest upon that which is the probability of the case; because we have it from the evidence of Captain Collins, that he did state this hare to be the devil in the shape of a hare; and therefore what Winter states of his not having said so, is completely and absolutely false.

Then, Gentlemen, we come to the evidence of Penny, and his evidence of declaration varies as I have before observed from all the declarations affected to be proved by the other witnesses. He states the act too to have been really done, which this indictment charges Mr. Crossfield with having conspired to do—he says Mr. Crossfield told him, he was one of the ring-leaders of the three that attempted to blow a dart at his Majesty at Covent Garden, and he would do the like again if he had an opportunity.

Something is to be gathered, as I before observed, from the demeanour of witnesses. You may collect something of the truth of their evidence from the circumstances of their appearing to come well or ill disposed to the person against whom they speak. And I think I may appeal to you respecting the demeanour of Penny, that he did not come with any very favourable or even with an impartial disposition towards Mr. Crossfield. After I had cross-examined him, and not at any great length, he brought out with great eagerness, “He said all this and *more*”—He was asked directly what this *more* was. It did not appear to be coming very quickly, and therefore I sat down to wait for it. After some pause, his Lordship asked what it was? No answer—Another pause—His Lordship asked him, if he heard his question—“Yes”—but still no answer. Again and again was his Lordship obliged to remind him that he was waiting for an answer—and then what was this more? Nothing additional could he venture to state—but he then says, your Lordship has got this down, and that down, and the other, repeating every thing he had said before, in the very same words he had before used, and in the  
same

same order, but not pretending that he had any thing new to state, though he had before said he had something more to state; and the whole of his behaviour created a suspicion, that he was endeavouring to invent something to extricate himself from the difficulty in which his zeal had involved him.

Gentlemen, I have observed upon the variances in the accounts given by these witnesses, of the declarations of Mr. Crossfield; and that naturally introduces the observation which I am now to submit to you, that inasmuch as I have before, I think, demonstrated, that you have not had any overt act proved by two witnesses, as the statute requires—so, on the other hand, you have not any confession of an overt act proved by two witnesses; because Le Bretton is the only man who has stated to you, that Mr. Crossfield confessed to him he was one of those that invented the air-gun to shoot his Majesty. Therefore to fortify that which, I think, is not established sufficiently to be fortified, you have merely the single evidence of Le Bretton, as to the confessions of Mr. Crossfield. But this you will recollect, is not a confession of any one of the overt acts proved, or attempted to be proved. You have no overt act proved of a conspiracy for the purpose of killing his Majesty. There has not been a single tittle of evidence produced by the Crown to establish that charge of conspiracy, and yet every one of the supposed confessions of Mr. Crossfield, relate to some supposed conspiracy, of which the Crown has not been able to produce a single tittle of evidence. Therefore you will consider how remote all these conversations of Mr. Crossfield are from proving, that he confessed to these witnesses that he was guilty of any one of the overt acts which is charged upon this record, I mean of any one of these overt acts upon which the Crown have offered any evidence to your consideration.

Gentlemen, this being the evidence on the part of the Crown, the Attorney General said, that he thought it would behove the prisoner to give some account of the instrument in question, and of the design with which it was made, and this he considered to be a necessary part of our defence.

Gentlemen, the Crown is to make out its case by its own strength,



strength, not by the weakness of a prisoner. A prisoner has a right to stand upon the defensive, and to say, I do not come here to prove my innocence, it is for you to prove my guilt—and evidence to prove that guilt must be produced before he can be called upon to make any defence at all. But even when a prisoner is called upon to give some evidence in his defence, the nature of that evidence must depend upon the nature of the case, which is attempted to be made out against him, and he is not to be called upon to give evidence, which in the nature of things it is not in his power to give.

Admitting the whole of the evidence that has been given on the part of the Crown to be true, and drawing from it every inference that the Crown would wish to draw, the knowledge of the existence of these models is only proved to have been in the prisoner, in Palmer, in Upton, and in Hill. Hill you have seen, Palmer you have seen, Upton you have not seen—and, therefore, I should be glad to know what witness I am to produce upon the subject.—Am I to produce Mr. Upton? The Crown state that he is dead, and, therefore, they cannot call upon us to produce him. I beg to ask then, how Mr. Crossfield is to be called upon to give any account of the nature of this instrument, when it is not pretended that there is any other living witness that ever saw it.

But recollect, Gentlemen, what it is that Mr. Crossfield is supposed to have seen. It is not affected to be said he ever saw any part of the instrument. For you will recollect, that in the conversation at Hill's, at which Palmer states Mr. Crossfield to be present, Upton was giving instructions for making the model, Palmer never saw that model, and Hill is the only witness produced who ever saw it, excepting afterwards in the possession of Upton, when Mr. Ward saw it.

With respect to the metal tube, that which is infinitely the most formidable part of the instrument, that too which might perhaps readily explain the meaning of all the rest, that without which all the rest is unintelligible (for I defy you to collect from the rest any supposition that any person, unless he were skilful in that line, could conclude that it was for an air-gun)  
that

that metal tube is not proved to have been in the possession of any person but Upton, Mr. Crossfield never saw it, never heard of it till afterwards; and, therefore, what evidence can he give of its purpose and intent? You will not forget, Gentlemen, that I am stating this hypothetically, giving the case for the Crown all the weight which can be affected to be given to it by themselves, and not allowing, because it is not proved, that Mr. Crossfield had the least knowledge that the wooden model was for the purpose of an air-gun, or that he had any thing to do with ordering it, further than possibly giving Upton a little assistance in explaining his directions.

It was in the power of the Crown, if the fact had existed, to have proved that Mr. Crossfield knew something more of the instrument, because they have called Mrs. Upton, who states that she had seen Mr. Crossfield at her husband's house; but she does not venture to state that when Mr. Crossfield was at the house, he saw either the drawing, the models, or the brass tube; and you will recollect, (for it is a thing never to be forgotten in the course of this cause) that that brass tube is only spoken to, as having been in the possession of Upton, and that there is not one single tittle of evidence that any one person, excepting those who have been produced to you, ever saw it, and these persons only in the possession of Upton. Palmer never saw it, Hill never saw it, no person ever did see it, except Pusey and Steers, and afterwards Mr. Ward, when Upton disclosed this supposed plot to him.

With respect to the evidence we have produced, you will observe, that we have produced evidence not immediately respecting Mr. Crossfield personally, but which will in some measure account to you for the charge which Upton brought against Le Maitre, Smith, and Higgins, who were the persons first apprehended. We have proved most indisputably, that those persons were pursuing an enquiry against him in the Corresponding Society, for a charge of a most atrocious nature; that they were pursuing it with some degree of violence, and that he was resisting it with every possible degree of violence and rancour.

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We have likewise proved to you declarations, that-but for their exposing him he never would have made that charge against them.

Now let us look at this indictment; what does this indictment import? To be a charge upon the prisoner and Smith, Higgins, and Le Maitre, of a conspiracy to kill the King, and Upton is supposed to be the instrument. The Attorney General stated in his opening, that Upton, if he had come into Court, must have come here to state himself an accomplice in the crime of High Treason, and that he was one of the principal conspirators.

Do I not then establish still further the extreme improbability of this charge as it stands upon the indictment, that Upton should have been supposed to have been in actual conspiracy with men, who at that very time were pursuing an enquiry against him in the Corresponding Society, were endeavouring to procure his expulsion from that Society on account of the infamy of his character, and respecting whom he made declarations which manifest his enmity and rancour? Is it to be supposed that persons enter into conspiracies for crimes with those with whom they are on terms of hostility? The supposition is most wild and extravagant.

You will also recollect the evidence of Mr. Palmer, as to the degree of acquaintance which Mr. Crossfield had with Upton, that the acquaintance was of very short duration, that it commenced with meeting in the Corresponding Society, and that the call upon the occasion, which is the subject of the evidence, was purely accidental. Why, Gentlemen, good men do not associate for good purposes without knowing something of each other, without having some general knowledge of the character which each of them bears. Bad men do not conspire to commit crimes without that degree of intimacy, friendship, and confidence, which shall enable each to believe that when he trusts his character or his life in the power of the other, he trusts it in the power of a man who will not betray him. A man surely will not offer to engage with another in a conspiracy, to commit the greatest and most atrocious crime that can possibly be committed, without a considerable degree of knowledge of him, and confidence



confidence in him; because for aught he knows, the moment after he has disclosed his purpose to him, that man would go, as it was his duty, and inform the Secretary of State of the transaction, and in an hour's time, he might find himself a prisoner in the Tower for High Treason. Here is then another of the strong improbabilities with which the whole of the case of the Crown is encompassed. It is supposed that Mr. Crossfield entered into a traitorous conspiracy with Upton, upon a short acquaintance, upon little knowledge, and therefore when he was not in a situation to bestow upon him that confidence which was absolutely necessary, to the guilty transaction imputed to him by this indictment.

But it is supposed that Mr. Crossfield must be a guilty man, because after Le Maitre, Smith, and Higgins, were apprehended, he left London with Mr. Palmer, and went to Bristol. If Mr. Crossfield was one of the persons charged in this conspiracy by Upton, why was he not apprehended at the time Smith, Higgins, and Le Maitre were apprehended? It is not affected to be said, that Mr. Crossfield had left London, till after, not only Upton was apprehended, and had given his information, but Smith, Higgins, and Le Maitre were apprehended. You will observe that the information was given by Upton to Mr. Ward, on the 12th of September. You will observe, too, (referring to another transaction) that there was a very violent quarrel between him and Le Maitre and Higgins, on the 4th, only eight days preceding. On the 16th of that month Mr. Ward had an interview with Mr. Pitt, and informed him fully of all the charge as it had been made by Upton: eleven days more passed and then Upton was apprehended. He made a full disclosure of this supposed conspiracy; and on the night of the 27th, Le Maitre and Higgins were apprehended; on the 28th, Smith was apprehended, and they were all taken before the Privy Council.

Now I beg to ask, when, for the first time, was it that Mr. Crossfield was supposed to have had a share in this conspiracy? If he was supposed to have had a share in the conspiracy at this time, most unquestionably Mr. Crossfield would have been ap-

prehended when the others were apprehended. He was not then apprehended, although his residence was perfectly well known; but it was not till afterwards, and long long afterwards that Mr. Crofsfield was the subject of any charge. If Mr. Crofsfield had then been the subject of any charge, and if the Crown could not readily have found him, there is an expedient to which they always do resort and afterwards did resort, namely, a proclamation, with a reward for his apprehension. The proclamation offering a reward of two hundred pounds for the apprehension of Mr. Crofsfield, I have no doubt, Mr. Attorney General will admit was not issued till the 27th of February, 1795.

*Mr. Attorney General.* I admit that the proclamation was not issued earlier than my learned friend has stated.

*Mr. Gurney.* It is candidly admitted by the Attorney General, that the proclamation offering two hundred pounds reward for the apprehension of Mr. Crofsfield, was never issued till the 27th of February, 1795, near five months after the charge was brought against the others and they were apprehended; therefore, I ask again, when was it that he was for the first time charged with this conspiracy? That he was not charged with it at the time the others were is plain, because he would have been apprehended with them; that he was not charged with it till long afterwards is plain, because it was not till long after that the Crown resorted to, that which is their never failing expedient, publishing a proclamation offering a reward for his apprehension.

Palmer has proved that Mr. Crofsfield's journey to Bristol, was not then for the first time proposed, that he had for some months had an intention of going to Bristol, for the purpose of trying experiments upon the waters, and seeing whether it was an eligible situation to settle in. But putting it for a moment upon the supposition that Mr. Crofsfield had retired to Bristol, upon the account of this charge, I do protest against its being considered as evidence of guilt, that a man has not strength of nerves to meet a charge of High Treason, more especially if you recur to the time when this transaction took place.

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My learned friend has stated that just previous to this, there had been two convictions for High Treason in Scotland, that a Special Commission had issued for the trial of persons then in the Tower, accused of High Treason in England. There was at that time a prosecution coming forward for High Treason, I will venture to say the most tremendous in the history of this Country; a prosecution not merely supported by the usual power, wealth, and influence of the Crown, but in which the whole legislature had combined to prosecute; where, as was most forcibly said by one of the great advocates for the prisoners, the two Houses of Parliament had made up the briefs of the Counsel for the Crown; where, above all, there was a prejudice upon the subject so deeply rooted, and so widely spread, that it was scarcely possible to find a man who was not tainted and corrupted with it. I have too the evidence of that which is notorious to all mankind, that some of the persons accused of that Treason, whom I have a right to call innocent persons, did not surrender to take their trials upon that indictment. One of the gentlemen charged who was at large, Mr. Holcroft, did surrender immediately. Wardle, Hodgson, and Moore, never did surrender to take their trials, and the prosecution afterwards ceased without their coming into Court. Therefore it is not to be presumed that a man's retiring from a charge of High Treason, or not putting himself forward to meet it at so critical a time as that, when this transaction took place, furnishes conclusive evidence of a consciousness of guilt in his mind. This I say upon the supposition of your not giving full credit to Palmer. But, Gentlemen, Mr. Crossfield is stated to have returned from Bristol, in the month of December, and here we have accounted for him completely, by the evidence of Mrs. Smith, because we have shewn that he lodged at her house, and did not leave her lodging to go on board the Pomona, till the latter end of January. Then he comes on board the Pomona, and you have the evidence of those persons, who have been called on the part of the Crown, to prove his declarations,

Gentlemen, there is one observation I omitted to make, and it is scarcely necessary for me to recur to it, because it was



forcibly impressed upon you by my learned friend, on the evidence of a *fact* in contradiction to some of those *declarations* the witnesses have spoken to.

Mr. Crofsfield is supposed to have said, that he was rejoiced at going on board a French ship, for he would rather go to France, than return to England. And yet he was a man so strangely formed as to be averse to happiness when it was in his power to procure it, for he most readily entered into a conspiracy to rise upon the French, to seize upon their ship and return to England. Gentlemen, evidence of a fact like that, where he was risking his own life in a very unequal contest, for the purpose of rescuing the ship, is enough to set at nought a thousand such declarations as those which have been spoken to of his joy at escaping from England, and a prospect of getting into France.

Then, Gentlemen, we have called to you persons who were confined on board the prison ship with Mr. Crofsfield. And here I must not fail to observe on the deficiency of the case proved on the part of the Crown. The witnesses who have been called have stated the names of a number of persons, who were in the daily and hourly habit of associating with Mr. Crofsfield—they have stated, that they gave those names to the Privy Council, or at least to some of the Agents of the Crown; and, therefore, the Crown had it in their power to have procured the attendance of them all, because they all of them came home in the cartel with Mr. Crofsfield. You will recollect that Mr. Crofsfield and those persons came over in the cartel the latter end of August, or the beginning of September, and this indictment never was preferred till the month of January. Mr. Crofsfield was all that time a close prisoner in the Tower, having no intercourse with his friends, and consequently very little, or indeed, not at all able to make any preparation for his defence. It was in the power of the Crown to have given you the satisfaction of hearing the testimony of all these persons, with whom he was in habits of real intimacy and friendship, to whom, therefore, if he had made any such declarations as these, he would have been most likely to have made them,

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Upon this part of the case we have produced some evidence, but here, too, we could only give you such evidence as it was in our power to produce; and surely we have a right to infer, that if all the persons had been called who were constantly in Mr. Crossfield's company on board the prison-ships, they would not have confirmed the evidence which has been given on the part of the Crown, otherwise you would undoubtedly have heard them.

Above all, the most material witness is Captain Clarke, who engaged Mr. Crossfield as his surgeon—Captain Clarke, with whom he constantly lived—Captain Clarke, who, you will not forget, had some conversation with Le Bretton upon this subject; for Le Bretton stated that he had some conversation with him, that he had informed the Crown of Captain Clarke, that Captain Clarke had undergone some sort of examination, and that he had seen him at the office of Mr. White, the Solicitor for the Treasury. Why is not Captain Clarke brought here? It is said he left this Country about Christmas last. The Crown knew the case which they had to prove against Mr. Crossfield, and undoubtedly it was in their power to have detained Captain Clarke in this Country to have given his evidence, if his evidence would have tended in the least to support this prosecution.

Gentlemen, we have done all that is in our power to do; we have, with great anxiety and with great diligence, sought those witnesses who were in the company of Mr. Crossfield at this time; and we have brought to you, first, Mr. Cleverton, who was taken in another ship a few days after the capture of the Pomona; and he has stated to you, that he was in the habit of associating with Mr. Crossfield constantly—that he messed at the same table with him—and that he never heard him make any declaration of disaffection to the King, or any confession of ever having engaged in any treasonable conspiracy. If Mr. Crossfield had been in the habit of doing this (which it is the object of the witnesses on the part of the Crown to prove), it is utterly impossible but Mr. Cleverton must have heard it. If Mr. Crossfield could make confidants of persons with whom he associated but little, and with whom he was not upon any friendly

terms, surely he would not have been more reserved to those persons with whom he associated much, and with whom he was upon friendly terms.

Mr. Cleverton is asked whether he heard Mr. Crossfield sing a republican song.—Yes, he heard him sing a republican song: the song is produced, and it is read to you. In the first place, the singing a song (which, by-the-bye, Mr. Cleverton says he never heard him sing more than once or twice) I take to be no sort of adoption of the principles which the song contains, even if the man who sings it is sober; but you will not forget that, in order to drown the sorrows of their captivity, they all indulged themselves pretty freely in the use of grog, and Mr. Crossfield especially, for he is stated to have been at that time in the habit of constant intoxication, which must weaken, if not completely destroy, the effect of all the declarations that have been spoken to on the part of the Crown. But how does it destroy all the effect which is sought to be given to singing a song—singing a song, too, after supper, by a person in the habit of intoxication, just at the very time when that intoxication must necessarily have existed? But if Mr. Crossfield was so incautious as to make declarations of this sort to Dennis and Le Bretton, and so incautious as to sing a song of this description before Mr. Cleverton, would he have been more cautious upon the subject of these declarations in the presence of Mr. Cleverton? Would not Mr. Cleverton, or the other persons with whom he was in the habit of associating, be the persons to whom he would have made this sort of declarations?—and would not Mr. Cleverton, therefore, have proved that he heard them?

Another circumstance spoken to by Mr. Cleverton was this, that any of the prisoners upon slight illness, and almost upon the pretence of an illness, might have gone to Landerneau hospital; that several persons went upon slight illness there, shortly before the sailing of the cartel, and in consequence of that they did not sail in the cartel for England. Therefore, if the Crown wished to establish, that which I think has been before disproved, that Mr. Crossfield had an anxious wish to avoid England, and



to reside in France, surely this is weighty evidence to prove that Mr. Crossfield might have avoided returning to England, and that he might have remained in France if he had chosen to remain there.

Then, Gentlemen, you have the evidence of Captain Collins, who was on board the same ship with Winter; and he states, that he invited Mr. Crossfield on board his ship for the purpose of his medical skill, to be applied to the prisoners who were sick; that that medical skill was applied constantly, and with great effect; and that by means of his skill and humanity the lives of fifty or sixty of the English prisoners were saved. He has also stated, that which is most material for your consideration, as respecting Winter, that Winter was a silly old man, telling foolish stories, and among others telling that story of the hare, upon which I have before observed; and that they used to tell foolish stories, too, for the purpose of making a joke of him. He says, Winter was their common laughing-stock; and I am sure it is impossible for your minds to have resisted the impression, that Winter was the constant butt of their ridicule, and that in truth it was scarcely possible that any of them could have said a serious word to him.

Captain Collins likewise proves another circumstance, that there was an offer—and an advantageous offer, made to Mr. Crossfield, if he would remain in France, namely, that he should have the superintendence of the hospital at Landerneau; yet such was Mr. Crossfield's reluctance to staying in France, and desire to return to England, that he refused that advantageous offer; and the reason he assigned was, that he wished to return to his native Country.

But then we have a circumstance presented to us, on the part of the Crown, which is supposed to be a most formidable circumstance; and you are to imagine, that although Mr. Crossfield was now about to return (unwillingly, as the Crown pretend—willingly and rejoicingly, as we have proved) to his native Country, that he was extremely afraid of having it known that he was so returning, and therefore he assumed the name of Wilson.

Now,

Now, Gentlemen, you cannot but have observed how completely the evidence for the Crown falls short of affording the inference which they wish to draw from it. Mr. Crossfield is stated to have himself inserted his name in the muster-roll as Henry Wilson, and that he was taken on board the Hope. To whom was that muster-roll to be returned?—to the Commissary at Brest. Was it to be sent to this Country? It is not pretended that it was.

Then you will recollect the evidence of Colmer, one of the constables of Fowey, who stated, that when he enquired for him on board the ship he immediately answered to the name of Crossfield. It is not affected to be stated, that he then made any sort of pretence that his name was Wilson. Therefore, I have the fact most completely with me, that, as far as regarded this Country (respecting which, and respecting which alone, he could have had any wish to conceal his name), he did not endeavour to conceal his name, but answered directly to the name of Crossfield.

But here is another of the improbabilities with which this case is attended. Is it to be supposed, if Mr. Crossfield wished to come into this Country, concealing his name, that he could have done it, considering the company in which he came—in a cartel, with a vast number of prisoners with whom he had resided many months in France, and resided with them under the name of Crossfield? He came with some of those persons with whom he certainly was not upon very good terms, as is clearly proved by the demeanour of those witnesses, and by the express declarations of dislike which they have made in Court. Is it to be imagined, therefore, that if he was afraid of being apprehended for High Treason upon his return into this Country, he would be so complete an idiot as to raise additional suspicions to those which they had before conceived?—that he was a person obnoxious to the Government of this Country, and therefore could not venture to return to this Country under his own name?

But I will suppose that a copy of this muster-roll was to be sent to this Country; then recollect another fact, which shews how completely the probability is with me in the reason why

Mr. Crofsfield ſhould insert the name of Wilſon in the muſter-roll at Breſt—Palmer has ſtated, that at the time when he laſt ſaw Mr. Crofsfield, all his property had been aſſigned over for the benefit of his creditors, and that he was then in debt. You know perfectly well, that the names of priſoners coming over in cartels are commonly inserted in the Engliſh newspapers; and, therefore, if the name of Crofsfield had been inserted in the Engliſh newspapers, as returning on board a cartel from France, that was certainly likely to bring upon him ſome troubleſome creditor, and he might have loſt that liberty to which he had been ſo very lately reſtored. Then I put it to you, whether, taking theſe facts together, it is not infinitely more probable that the fear of creditors induced Mr. Crofsfield to take the name of Wilſon at that moment, than that which the Crown ſuggeſt—the fear of being apprehended for High Treason. The reaſon I aſſign is ſtill further enforced by this conſideration, that he is ſuppoſed to have made declarations of his having been actually guilty of High Treason to thoſe perſons with whom he came over, and who conſequently muſt have had their ſuſpicions ſtill more excited by his changing his name.

Gentlemen, I have now taken ſuch a brief and imperfect view of the caſe as I have felt myſelf able to take, certainly not in the manner in which I could have wiſhed to have done it, becauſe I could have wiſhed to have diſcharged my duty to the priſoner with infinitely more effect than I have powers to diſcharge it; but I truſt that the obſervations which I have made to you will not be totally without their effect; and I have the leſs anxiety, becauſe I am ſure the opening of the priſoner's caſe by my learned friend, Mr. Adam, cannot have failed to have produced the ſtrongest conviction in your minds; and I ſhould have been extremely reluctant to have gone over all the ground which was ſo ably trod by him, becauſe I ſhould have riſked weakening the impreſſion which I am ſure his addreſs to you muſt have made.

Give me leave, then, Gentlemen, in a ſingle word, to recal your attention to the nature of the proof which has been given by the Crown in ſupport of this indictment.

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There must be two witnesses to an overt act, or one witness to one overt act and another to another. It appears to me, that the evidence for the Crown can be supposed to apply to only one of the overt acts in the indictment.—To that one, I contend, they have not produced two witnesses; because one witness only speaks to the identity, and another speaks to the transaction; and that witness who speaks to the identity, absolutely excludes all idea of any criminal concern in the transaction; and, indeed, he who does not speak to the identity, does not impute to the person who is supposed to be the prisoner any criminal concern in the transaction.

This being the case, I contend, that the defect is not to be cured, and cannot be cured by any auxiliary evidence whatever—that the only witness who has attempted to prove a confession of an overt act is Le Bretton, and that the overt act which Mr. Crossfield is supposed to have confessed to Le Bretton, is not one of those overt acts upon which the Crown have offered any evidence.

Therefore, Gentlemen, the question is, whether the prisoner stands in that condition that he is to be considered as provably attainted of open deed of compassing and imagining the death of the King, according to all the strict requisites which the wisdom of the law of England has provided. I submit to you, that the Crown have completely failed in establishing that proof, and that therefore he is entitled to your acquittal.

Gentlemen, you cannot but feel impressed upon your minds on the one hand, the importance of this case to the public, and on the other, the deep and the last importance it is of to the prisoner at the bar. If the prisoner is guilty, and is proved to be so by evidence which at once satisfies the requirements of the law, and completely convinces your minds, unquestionably it imports the public, that by your verdict he should be pronounced to be guilty. But unless the Crown have given that proof which does amount to that complete demonstration which the law of England requires, sure I am you will not pronounce the verdict which must shed that man's blood—that verdict which if pronounced, in a few days the awful sentence of the law must be  
executed

executed upon him. He must be hanged by the neck, but not until he is dead, he must be cut down being yet alive, he must be embowelled, and dismembered. So awful and so dreadful a sentence will awaken in your minds all the caution you can possibly apply to this case, and weighing it with that caution which I am sure you will apply to it, I trust you will pronounce a verdict of NOT GUILTY.

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*Lord Chief Justice Eyre.* Mr. Crossfield you have been heard in your defence by your Counsel, you have also a right to be heard in your own person, if you think fit to offer any thing to the Jury.

*Prisoner.* My Lord and Gentlemen of the Jury, I have nothing to add to what has been already stated by my Counsel, except, that however occasionally I may have appeared imprudent in words or in actions, I am totally incapable of the atrocious crime laid to my charge; further I say not, but rest my case satisfied with my own innocence and the justice of an English Jury.

*Mr. Attorney General.* As I find Le Bretton is now come, we will with your Lordship's permission ask him a question or two.

*John Le Bretton, (called again)*

Examined by *Mr. Law.*

Q. Do you know Mrs. Smith, No. 17, Great Hermitage-street?

A. By sight.

Q. Where Crossfield lodged?

A. I do not know that he lodged there.

Q. Do you remember having any conversation with her, in which she made any enquiries about your examination before the Privy Council?

A. Yes;

A. Yes; I remember she asked me two or three times what I had said.

Q. Are you sure that the conversation began by her asking you, or your voluntarily telling her?

A. By her asking me.

Q. You are sure of that?

A. I am certain of it.

Q. Do you remember her saying any thing particular respecting the evidence you might be called upon to give in this place against any person. Was any thing said about the manner in which that evidence should be given, favourably or otherwise?

A. Before I was subpoenaed she said she hoped I would not say any thing to hurt the prisoner.

Q. Did you say any thing in answer to that?

A. I told her I should speak the truth if I was called upon; I did not know whether it would hurt him or not.

Q. Was that the whole of what you said?

A. I believe that is as near as I can recollect; that I would speak the truth.

Q. Did she make any observation upon that?

A. Yes; she said "truth is not always to be spoken you know."

Q. Are you sure she said so?

A. Most certainly I am.

Q. And that she began the enquiry of her own accord, as to the examination before the Privy Council?

A. Yes.

*Lord Chief Justice Eyre.* Mr. Gurney do you wish to make any observations upon this evidence?

*Mr. Gurney.* No, my Lord—I do not think any observation necessary.



## R E P L Y.

MR. ATTORNEY GENERAL.

Gentlemen of the Jury,

When I rise to address you in this stage of the business, which you are met to determine upon, I can assure you that there is no man that feels more than I do, an awful sense of the importance of the duty which you have to execute.

Gentlemen, you will permit me to say further, that if there is a circumstance to which, at this moment, when I am rising with a full conviction in my own mind that I am entitled to ask at your hands, upon the evidence which you have heard, a verdict of guilty, I say if there be a circumstance, to which I can look with satisfaction at this moment, or to which I can hope to look with satisfaction at any future period of my life, it is this—that the Constitution of my Country, in the administration of its justice, protects those, whom it is my duty to prosecute, against any error which I may fall into, either in matter of law, or with respect to the conclusion that ought, as to fact, to be drawn from the evidence, by interposing, between my observations and the fate of the prisoner, the advice of the wisdom that presides here, and the conscientious discharge of your duty as a Jury, which I am sure the Country and the prisoner will receive at your hands.

Gentlemen, I know too well the operations of my own mind, guarding it as much as I can against false impressions, not to feel that I am unable sufficiently to protect my judgment against the tendency which a prosecutor's view of the case has to mislead it. When I call therefore upon you, on behalf of the Country, for a verdict of guilty, it is, and ever will be to me, a most lasting satisfaction, that, between the judgment that I form, and the fate of that individual, you are first to receive the advice and direction of those whose duty it is, according to the Constitution, to advise and direct you; and  
you

you are then to determine whether this prisoner is or is not guilty of this charge.

Gentlemen, I agree to every observation which has been stated to you, with respect to the importance of this case: but this is not a case important only on one side. Gentlemen, the fate of Mr. Crossfield, who stands now before you upon his deliverance, is the fate of a person whose life is undoubtedly precious in the eye of the law, whose life ought to be precious to your consciences, because it is precious in the view of that God who made you and him. You will however recollect also, that you owe a duty to the Country, by a verdict according to evidence, to give protection, according to law, to the life of the Sovereign, whose life, I may venture to state, is at least as dear to the law of England, as that of any man who is his subject. The subject and the Sovereign are entitled to receive from you the protection of the law: if in this case a verdict of not guilty be due to the person who stands before you, God forbid that any consideration of the importance of the life of the Sovereign should induce you to deal out the least injustice to the unfortunate prisoner, who now stands at your bar. But a just verdict the Country hath a right to receive at your hands.

Gentlemen, with respect to the law of this case, it appears to me that this case has no difficulty, in matter of law, in it. This is not a case of such Treason as is sometimes represented as constructive Treason, and by a variety of other names, which occur in the books, and in the history of legal proceedings in this Country. But it is a case in which no question of difficulty, with respect to the law, can be stated to a Jury of the Country; it is the simple case of a direct attack against the life of that person; to compass or imagine whose death, when a measure is taken for that purpose (whether the measure is effectual, or not effectual for the purpose), is Treason under the express letter of the law. The questions therefore, which you have to try, I apprehend are these: Did the prisoner do any such act as any of those which are charged in this indictment? Did he do any such act with  
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the intent charged by this indictment? Is it proved that he did such act with such intent by competent and sufficient legal evidence? And this last question, I apprehend, I may state to you as including the sense of the statute of Edward III. when it speaks of the person indicted "being provably attainted of "open deed, by people of his own condition." That the fact was done, you must be satisfied before you can convict; that the fact was done with the intent charged by the indictment, you must also be satisfied: if your minds are satisfied on these points, it only remains for you to consider, under the advice which you will receive in matter of law, whether the fact is proved, and the intent is proved, according to the rules of that law, the benefit and protection of which you are bound to dispense to this prisoner.

Gentlemen of the Jury, this case has been very ably stated to you on the part of the prisoner; that statement has consisted partly of general observations upon a general view of the case, and partly of particular remarks upon the particular expressions, and the particular contents, and import of the evidence, which has been given by each and every of the witnesses.

Gentlemen, you will give me leave to do now, what I attempted to do in the outset, to lay out of the case entirely the fact that there ever did exist such a person as the man whose name you have so often heard, I mean Upton.

Gentlemen, I opened this case to you by stating, as strongly as I could, that if he was here to give his evidence, it must have been most anxiously watched: it appeared to me, at least, that when a man came, charging himself, out of his own mouth, with an offence the most heinous that can be stated, not merely in a political view, but in a moral view—for this is not a mere political offence, as affecting the King as King, but looking at it with a view to the character of those who admit themselves to be guilty of it, it is as enormous a moral offence as it can enter into the heart of man to endeavour to perpetrate—when such a man came to give evidence, his testimony must be heard with great jealousy. When the witness must have been bound to admit in his testimony that he

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had, to a certain extent, embarked in a project to murder an individual in the Country, I am sure, Gentlemen, I shall not withdraw from what I have before stated in the outset, that if you could not find, in the rest of the evidence laid before you, sufficient reason to affect the life of a third person, I should never have asked you for a verdict against the life of a man upon any credit you could give to such a witness alone.

Gentlemen, I lay out of the case also all the evidence, which has been offered to you on the part of the defendant with respect to the malice, with which this man, Upton, has been supposed to act. In the first place, with regard to the present prisoner, sift the evidence from the beginning to the end of it (I beseech you to do so with respect to every particular, in the whole of the evidence, where your minds feel a leaning in favour of the prisoner), I think I may state to you that there is not a single tittle in it that amounts even to evidence, deserving the name of suggestion, or even of insinuation, that Upton ever had any malice whatever against Crossfield, the prisoner. With respect to the other persons, whom he accused, I mean Smith, Le Maitre, and Higgins, it is extremely obvious upon the evidence, for God forbid I should seek to conceal from you any fact that does appear the fair result of the evidence, that between him and some of those persons, if not all of them, there had been a quarrel, which, if you please so to take it, had led to great rancour, and great malice upon his part. One of the witnesses has told you, that with respect to Le Maitre, at least, a reconciliation had taken place. I think I might ask you, supposing this was a question between, not the present prisoner and Upton, but between Le Maitre, Higgins, and Smith, and Upton, if he had been examined as a witness, whether any thing at all conclusive is proved, after it is established that a man brings forward a charge, actuated by a purpose of malice in so doing? That you are bound as men of conscience to sift a charge, so brought forward, to the bottom; that you are bound to see that the malice of the man's mind does not mislead him in point of veracity; that you are bound to suspect that it may mislead him in point of veracity; that

that you are bound to be jealous, lest that malice may create in his mind the prejudices that may lead him to go beyond the truth, when he is charging the person accused, is that, which it is not only my duty to admit, but it would be my duty, in a case which called for it, to press most strongly in favour of the prisoner upon your attention. But, on the other hand, I should neither be speaking the language of the law of England, nor the language of common sense, if I should say that in every case in which a man brings forward a charge, because he has malice in his mind, the charge is false; that it is therefore false, because the person who makes it is malicious. The malice may be his reason for bringing forward the charge, but it will always be a question for a Jury to determine whether, supposing the malice to be the motive for his bringing forward the charge, there is or is not evidence of the truth of that charge, which malice leads him to bring forward. Now I beg your attention to the evidence itself, as to this matter: throughout all that has been stated, on the part of the prisoner, with respect to Upton's malice, if it even applied to Mr. Crossfield, which there is no pretence in the world to say that it does, there is not the least admission in all the language, which Upton holds upon the subject, that the charge which he had made was not true. He has stated a reason, and a very bad reason, undoubtedly, for bringing forward that charge of guilt, in which he himself participated, but he has never stated to any of the witnesses produced, any thing like an admission that the charge itself was not true. The amount of all he said is this: it is true that I have brought forward this charge. I insist upon the truth of the charge. I implicate myself in the guilt. I do not pretend to say there was innocence any where. I assert that there was guilt every where. It may be true that I have a malicious motive for bringing it forward. But, Gentlemen, be that as it may, and whether he was or was not reconciled to Le Maitre, whether he was or was not reconciled to Smith and Higgins, whether he was or was not unfriendly to them, or any of them, at the time he brought forward the charge against all the four, there is

not one single tittle of evidence, not one from the beginning of this cause to the end of it, which even imputes to him—nay, the tendency of the questions put by my learned friends, in their examinations and cross-examinations, does not impute to him that he had any malice against the prisoner, against this individual, upon whose fate you are now to decide. But, Gentlemen, suppose you take him to be as wicked and as malicious as they represented him to be, what has that fact to do with this case? Have I laid before you one single word of evidence, as to that man's declarations, made before any Magistrate? Before any Magistrate in the Privy Council? Before the Privy Council? Or made any where? Have I not put the case to you, desiring that all that could have been stated should be forgotten—that it should be forgotten wholly, if a single syllable of it has found its way into the evidence? I have endeavoured not to bring before you, least it should endanger your consciences, one single word of declarations made by that man, Upton. I have proved, indeed, some particular facts, with respect to certain things which were in his possession; with reference to which facts I shall have to trouble you with some observations presently; but all testimony as to his declarations you may utterly disregard; and when you come to determine between your Country and the prisoner, you will be so good as to decide this case, assuming as a fact that Upton never in his life knew any thing relative to the transaction, except what is proved to have passed in the presence of the prisoner; and that he never uttered one word about this matter, except what he is proved to have uttered in that presence. Gentlemen, I am content to go further, for I can agree that, as to Upton, you should not only believe that he has said nothing more; but such is the nature of the proof in this case, that you should even act upon the supposition that if he had been here present, in order to be examined, he might have spoken favourably for the prisoner. I have no objection to your taking it even in that point of view. The proof is such, that even then the result of it cannot be misunderstood. The case comes to this. Is there, upon the evidence, inde-

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pendent of all the transactions, in which Upton may or may not have had a concern, sufficient testimony to establish that the person at the bar did conspire, either with Le Maitre, Smith, and Higgins, or with any other persons, for the purposes mentioned in the indictment? Or is there upon the evidence, independently of all such transactions, sufficient testimony to establish that he, if not in conspiracy with them or others, did any such acts, as can be considered as charged against him alone in the indictment, for such purposes? My Lord, I hope, will go along with me, by and by, in what I am about to state to you; or, on the other hand, I trust he will do that, which I am sure I need not entreat him to do, and which I shall be most thankful to him for doing, he will correct my view of the subject. I say, did the prisoner conspire with the persons named, or with any other persons? If Smith, Le Maitre, and Higgins are as innocent in fact, as I am bound at this moment to suppose that they are; yet, if this prisoner conspired with Upton, Palmer, or any other persons, as is charged in the first overt act laid in the indictment, and if the conspiracy was with the intent charged in the indictment; and if there is legal evidence both of the fact of the conspiracy, and of the intent with which the conspiracy is charged to have been entered into, then the prisoner must be found guilty. I say, moreover, that, putting all conspiracy out of the case, and supposing that no man living, except the present prisoner, can be charged with any guilt, yet if this prisoner did that, which is stated as the second overt act, or if he did any such acts as are stated in the record, where the purpose of putting the poison in the arrow is left out; if he employed Hill, for instance, as to the drawings or model of the instrument, whether in concert, or not in concert with other persons, who did or did not know his intent, if such circumstances be proved sufficiently, though against him singly, and his acts are proved to have been done with the intent charged in the indictment, and proved by legal evidence; I say, moreover, that then also you are bound, speaking always under the correction of my Lord, to find the prisoner guilty.

I agree that, if neither the facts of the conspiracy, nor his own acts, as charged in the record, are made out, or if they are not made out as connected with the intent charged in the indictment, or if made out with the intent charged in the indictment, they are not established by legal formal testimony, you cannot convict the prisoner. There may be very great inconvenience, perhaps, in the state of the law, with respect to proceedings in cases of this kind; but God Almighty forbid that I should ask you, or that you should treat me otherwise than with some degree of indignation, if I did ask you to find any man guilty upon any other state of the law than such as it is, when you are sworn to decide upon the facts according to it.

Gentlemen of the Jury, the first question put to you by the prisoner's Counsel, by way of general observation, is this: it is said, with what motive could the prisoner possibly do these things? Why, how is it possible for men in Courts of Justice, administering the law, to answer that question better than by referring to the motive, to which the law ascribes such facts? If you should be satisfied, in the result, that these things were meant, the conclusion of law upon the case is, and it must be the conclusion of fact, that the motive was that which the law calls a malicious one. Gentlemen, the purpose (and this does not depend upon the evidence of the sailors from Brest), the purpose was at least a secret one. Why was it a secret purpose? You will recollect that the first witness, Dowding, speaks to you with regard to the application made to him by Upton, and also the prisoner Crossfield, for it was proved afterwards by Mr. Palmer that Crossfield was the person who went to Dowding, with Upton and with himself; that he tells you that he enquired for what purpose the tube was wanted; and that the answer was, that, with respect to the purpose, it was a secret. I repeat to you, Gentlemen, what I observed in opening the prosecution, and I submit to your candour that the observation is fair, that when you see an instrument framed, such as that which has been described, calculated to be used for such dangerous purposes, as Mr. Mortimer proved upon his oath last night that

that it was capable of being applied to ; when you see that a feathered arrow was intended to be fabricated, capable of being used for the most mischievous purposes ; and when you see, beyond all question, that the prisoner at the bar is implicated in the fact of being concerned in the framing and fabrication of these things ; and when you hear besides the testimony of four persons, if I am to reckon Mr. Winter as one, with respect to whom I shall say a word to you presently, or the testimony of three persons, against whose integrity, against the purity of whose motives there has not been even a suspicion intimated in this Court ; when you hear from them for what purpose of mischief these things were stated out of the mouth of the prisoner himself to have been framed and fabricated, I repeat to you that, in such circumstances, some attempt ought to be made on the part of the prisoner ; and none has been made to satisfy your consciences what was really the purpose intended by those who fabricated these things, if the purpose intended was not, in truth, that which is charged upon this record, and that which the prisoner has fifty times over, if you give credit to Mr. Winter, avowed it to be.

Gentlemen of the Jury, you have heard observations upon the state of the times, when this accusation was brought forward. You have heard that the times had a tendency to encourage plots. You have heard of the trials for High Treason. You have been put in mind of the event of those trials for High Treason. The Juries of the Country administered the justice of the Country ; and of the administration of the justice of the Country, I am not the individual who means to say otherwise than that it is well administered. I know that the Constitution of this Country, the life of the Sovereign, every blessing which we can enjoy in the Country, is finally to find its security in the verdicts of Juries. But how do any observations upon those trials, either with respect to the magnitude of them, or the nature of them, or the event of them, or upon any transactions respecting them, apply to this sort of case ? Gentlemen, did those trials induce Upton to stand forward to charge these people with a plot ? Be it so. But do



you think that those trials, or the transactions that had relation to them, induced all these brass founders to conspire? That they induced these sailors, when at Brest, to conspire? And that, in order to help out Upton's story, represented to have been made for his own safety (though I do not see how that could have been so effectually put in danger, as by his own relation of his own guilt), all these brass founders and sailors have been induced, by the state of the times, to give the evidence which you have heard? Surely there are, in this case, circumstances of the most singular kind that ever happened, if Upton coined the whole of this plot. There are no less than four brass founders in England who relate that, in fact, application was made to them for the purpose of fabricating such an instrument, as he says was intended to be framed. There are, then, very singular circumstances in the conduct of the prisoner. You find the prisoner absconding as if he was guilty. You find the prisoner avowing the plot which Upton was bringing forward; declaring his guilt; making declarations respecting the purpose of the fabrication of this instrument, and the nature of the instrument, such as you have heard: and you find three or four witnesses coming along with that prisoner from a distant country, unimpeached, and unimpeachable in character, swearing before you, and before God, to his declarations of his guilt, as declarations so seriously made as to impress them in the manner they have mentioned. Can all this originate from the times, and the State Trials?

Another circumstance has been stated, of improbability arising from the nature of the place where this plot was to be executed; I mean Covent Garden Theatre: the Theatre has been mentioned, as you recollect, by two or three of the witnesses who came from Brest. Why, Gentlemen, God be thanked, it is perhaps the best security we all have against the wickedness of men, who are disposed to act wickedly towards us, that such purposes of the heart are not always conducted under the influence of the wisest heads; but I see no improbability in this. I know, from the history of transactions in this Country, that in open day light, that in the open streets of this town,

town, through a very considerable part of this town, the person of the Sovereign may be attacked, and yet that it is impossible to find out the individual who is guilty of the outrage. With respect to the place, therefore, it appears to me to be a place as well adapted for such a purpose, considering how Mr. Mortimer states that it could be executed, as any other place. But whether the place was well or judiciously chosen or not for the purpose, I am persuaded my Lord will tell you, if a step was taken for the fabrication of this instrument, that that step, though an injudicious one, is a sufficient overt act, if it be sufficiently proved to manifest that compassing and imagination, which makes the crime within the statute.

Another observation was stated to you, that you had here a strange set of conspirators, ignorant of the nature of air-guns. If they were ignorant of the nature of air-guns, they took some pains to inform themselves of the nature of air-guns, and to remove that ignorance. They applied to Cuthbert, who, you recollect, informed you that an air-gun had been shewn to two persons that came to him; but Mr. Mortimer must have satisfied you, if that fact, which Cuthbert deposed to, was a fact which shewed the ignorance of the persons concerned; that, at least, they had become so wise in this profession of making air-guns before the model was finally delivered to Hill, that though Mr. Mortimer tells you it is not very skilfully done, yet, he says, that from that model he should collect that an air-gun was intended to be made; that though it is not the handy work of a skilful artist, it is a sufficient paper to enable a person, understanding the subject, to fabricate an air-gun; and with verbal information, Mr. Mortimer says, even that part of the wooden model, which has been produced to you, might be adapted to the fabrication of this dangerous instrument.

Gentlemen, it has further been stated to you, by way of a general observation, that Crossfield and Upton's acquaintance had been very short. Now that tends a little against a former suggestion, that he could have malice against Mr. Crossfield. No circumstance has even been hinted at that could, in that  
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short acquaintance, infuse into his mind any malice against the present prisoner. Short however as their acquaintance was, they had become excessively intimate; for it does not depend only upon this fact, viz. that Mrs. Upton has sworn that she has often seen them together, but it is clear that, short as their acquaintance was, they were intimate enough together to set about the fabrication of an instrument, capable at least of being applied to purposes of extreme danger. Their acquaintance was long enough (that is out of all question) to lead them together from Upton's shop to one brass founders in the city; to lead them together to another brass founders; and from him again to a third; from him to a fourth; and from him to Hill, and there to deliver to that person the paper, which will be exhibited to you, and which I have now in my hand, which contains the drawing of the wooden part of this instrument. I think you will see clearly that their acquaintance had been long enough, and sufficiently intimate to introduce them to so much of connexion with each other, as to induce Mr Crossfield to become a party to the fabrication, or at least to the drawing the model of this instrument, containing the representation of the figure of that arrow, which might be replete with poison, as Mr. Mortimer tells you, and, at all events, was replete with infinite danger.

Gentlemen of the Jury, another observation has been made, which is this: that there was no proclamation for Mr. Crossfield till the month of February. Be it so. In the first place, you will recollect that Mr. Palmer, who was called to you, and I say no more of him than that he was an unwilling witness; that Mr. Palmer informed you that he had undertaken to procure his attendance; and it is not immaterial that he had undertaken to procure his attendance too, according to his evidence, as a witness. Moreover, I apprehend that any man, who understands a subject of this kind, will go along with me in believing that a proclamation with a reward, is that which is full as likely to send the person described in it out of the Country, as to procure his attendance in it; and whilst Palmer's engagement to procure the attendance of Mr. Crossfield



field stood good, till there was no hope that that attendance would be procured according to that promise : I must take leave to state that it would have been a very imprudent measure to have issued such a proclamation. But if this be otherwise—how can such a circumstance blow out of Court the effect of all the rest of the evidence, which has been given you in this case ? And with respect to fact, if there would be any justice in the observation which I have been making upon general principles, does not the conduct of Mr. Crossfield, when this proclamation is issued, most distinctly and clearly prove that it was not a measure calculated to procure his attendance ? The prisoner, you have seen, left London, and went to Bristol, when this matter was first brought forward by Upton. It is stated by Palmer, that he went there for the purpose of considering whether he should not establish himself there in the medical line : he intimates that that was his purpose. Now you will permit me to submit to your judgment this observation ; that it is impossible but that the prisoner, before he went there, must have known that Upton had made a charge against Smith, Le Maître, and Higgins : that fact, beyond a doubt, he must know. Then either he knew Smith, Le Maître, and Higgins to be innocent, or he knew nothing of the matter, with respect to them, and he did or did not know himself to be innocent. If he was himself innocent, you will be pleased to recollect that it is proved, beyond contradiction, that he had taken this part at least with Upton, namely, to go to all the brass-founders, and to proceed to the extent in the fabrication of this instrument ; to which it is proved he did proceed, by being a party to these drawings, from which Hill fabricated the wooden models. He was certainly then a person who could give information upon this subject. It was absolutely due to Smith, Le Maître, and Higgins, that Crossfield, if he knew as much of this matter, as it is proved beyond a question that he did know ; and if he knew that the transactions, up to this period, had been connected with no manner of guilt, it was his duty to them to have come forward, and to have stated the transactions as they were, and to have

assisted in clearing these men, who have been represented this day as innocent. If he was innocent himself, he came forward without any danger. If he was guilty, or if there were circumstances that would implicate him in a strong suspicion of guilt, he might have a reason for not appearing at the Privy Council as a witness. He goes however to Bristol upon the errand which has been mentioned. The names of any persons whom he saw there are not mentioned in evidence: his making any enquiry, in reference to the purpose for which he went there, has not been given in evidence. He comes up to town: he does not go to his lodgings in Dyer's Buildings: he does not even call there, during the whole time he is in town: he goes to a lodging in Wapping, a singular removal for a medical man who meant to settle at Bristol, according to Palmer's evidence. The evidence of Palmer, who had been with him at Bristol, who states his privity to his purpose of going to Bristol, who had seen him at Bristol, his farther evidence, if I take it rightly, is this, that, having undertaken to bring him before the Privy Council, he never saw him when he was in town, but at his own chambers.

Then he goes down to Portsmouth. It does not become me to represent to you, because I think the evidence does not authorize me to do it, that the Captain of the vessel might not know his name; and I shall remark to you more fully presently, with respect to the absence of this and other Captains. I think that in the absence of these Captains, whatever they might probably know favourable to the prisoner, you ought to consider them as knowing, and give him the benefit of all the supposition that you can make in his favour. I will put the case then, if you please, that Captain Clarke knew the name of the prisoner: it does not appear whether the rest of the crew did know it or not: but it appears that he went by the name of the Doctor, from the time he embarked at Portsmouth till they went to Falmouth. He appears to have been repeatedly on shore at Portsmouth, and it is fit I should state that for his benefit. At Falmouth, as the evidence stands, he never was on shore but once. Whether you ought to collect from the nature of the account,  
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that has been given, any reason to suppose that he remained on board for the purpose of concealment, I rather leave to your judgment to decide, than to take upon myself to determine. However, this is clear, that there is, in point of fact, no one witness who hears this man say any thing with respect to his own situation, as connected with this project, till after they had sailed from Falmouth; and it is a material thing that the conversation of this man, relative to this project, when he says that Pitt would send a frigate after him if he knew where he was, begins two days after the vessel had sailed from Falmouth, upon a voyage which, as one of my learned friends most truly states to you, generally endures fifteen or eighteen months, or more, and in the course of which there is no land to touch at. Having left Falmouth, he begins the conversation with one of the persons, in which he says, that Pitt would send a frigate after him. He is afterwards captured, and carried into the harbour of Brest: while he is there, it appears now to be in evidence from the defendant's own witnesses, that he stood at least in a situation of so little dislike among the persons with whom he was living, that it has been stated that he might have had a situation of advantage there. Gentlemen, you will recollect, with reference to that, that it is proved by other witnesses, that he stated before he left Brest that he had settled matters to his satisfaction, and, having settled matters to his satisfaction, what is it that he does? He assumes the name of Wilson; and he not only assumes the name of Wilson, but he does this also, he takes the name of Wilson, as a person of that name captured in the ship Hope. Now, an observation has been offered to your attention of this sort, namely, that he was afraid of his creditors in this country. Supposing he changed his name to Wilson, on account of his creditors in this country, what occasion had he to state that he was captured in the ship Hope? Would his creditors have found him out more readily by the name of Wilson, captured on board the Pomona, than by the name of Wilson captured on board the Hope? It is impossible for me to account for that circumstance. It is my duty to mention to  
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you, what my learned friend, who spoke last, stated—that Government knew the names of the persons who came on shore in this country.—It might be his project to take the name of Wilson, as captured in the ship Hope, with a view that it might not be understood that the person who came on shore at Mevagissy, was not Wilson captured in the ship Hope, but Crossfield captured in the ship Pomona; and I dismiss that part of the case with saying, that I cannot comprehend why the ship Hope was inserted with reference to any purpose in which the creditors could be concerned.

But, Gentlemen, consider what is stated by Penny, whose testimony is totally uncontradicted, whose character is wholly unimpeached, and, which I have therefore a right to say before a British Jury, is perfectly unimpeachable. The prisoner applies to him in the course of the voyage home—and what does he say to him? Does he say, I beg you will not mention that I have taken the name of Wilson as captured in the ship Hope—for fear my creditors should lay hold of me?—No:—He says, “You remember what I stated to you on board the Elizabeth.” What was it he stated on board the Elizabeth?—That which I say is a confession of the fact charged.—He did not tell him on board the Elizabeth, that he was afraid of his creditors, and therefore about to change his name to Wilson, and substitute, instead of the Pomona, the name of the ship Hope; but he tells him that he was the person engaged in this scheme of assassinating the King, by means of a tube and barbed arrow—and that is the information which Penny is desired by the prisoner to forget in the course of this voyage.—Now, why he was to forget that, is a question which your consciences must determine!

But this is not all:—When he comes on shore, he is taken into custody, in consequence of an information given by Winter, who states a foolish story of a hare; and I am ready to admit, and think it becomes me to do so, that that seems to my mind at least a circumstance of such improbability, that, if this case depended upon Winter’s testimony, though I believe a great deal of it; and I will state my reasons by and by, why I do so. I should think it an extremely hazardous thing to come to

a conclusion against the prisoner upon his evidence alone. Winter went before the Magistrate; and, whether Winter's understanding is considerable, or whether it is of that ordinary sort, that entitles Captain Collins to call him a foolish fellow, the fact is, that the man's mind was so much impressed with the truth of what he has related here to-day, that he did think himself bound to state the facts to a magistrate, and, wise, or mad, or foolish, or whatever you please to call him, such an understanding, as he has, has been at least fortunate enough to conceive of this business, as the understanding of three other sensible men have led them to conceive of it, who, in point of fact, confirm him in every circumstance, that he has stated, except one, and that is the fact of the King having been actually shot at.—Now, the prisoner knew in this stage of the business, whether he came to this country for the purpose of avoiding his creditors, under the name of Wilson of the Hope, or whether he came to this country under this name for the purpose of concealing a person, who was a party to the transaction charged upon this record. He now knew that he was accused of this most heinous offence.—What would have been the conduct of Mr. Crossfield, if it was false that he had been party to this transaction? if it was false that any such declarations had been made in France, as these four witnesses have spoken to? I should be glad to know whether it was not, in the natural course of transactions, that Mr. Crossfield should have said—Let me go to this magistrate: I did leave the Kingdom of Great Britain for foolish reasons, for reasons, against the influence of which Palmer, the attorney, ought to have protected me, I did leave that Country under circumstances of some degree of suspicion; but I have been an unfortunate man, captured with my fellow prisoners in Brest. I am sure that neither Winter nor any other of my fellow prisoners, coming home with me in this ship, can add to the suspicion by any information that can be given as to what my conduct in France has been.—But is that the case?—No—on the contrary, instead of meeting the investigation of the magistrate, instead of avowing his innocence both in his transactions in France and in this Country—though he knows that the charge

charge is made by one of his fellow prisoners, who came over with him, the mode, which he takes to get rid of the effect of the charge, as he is conveying to prison, is what has been stated by two witnesses. Questions are put whether he was not drunk, and whether he did not fall asleep within half an hour after he spoke of the pistols and the post-boy.—With respect to the effect of the answer to these two questions, that is for you to judge of; but there is no evidence that he did not understand what he said. He attempts to corrupt the officers, and follows that up with a conversation, which I wish to represent accurately, because it appears to my judgment excessively material.—He says, You had better than have five shillings from those, who are to pay you, if you carry me to gaol, have two guineas a piece from me to let me escape.—The officer enquires what he would do with the post-boy.—His answer is to this effect—Lend me that pistol, and I'll settle that.—This has been spoken to by two witnesses.—Now, I put it to you, as men of conscience, is this the conduct of an innocent man? Is it not the conduct of a man guilty of something? If it be, I say it is conduct which proves to demonstration the truth of what the witnesses, who come from abroad, have said. It does not prove the truth of what the witnesses here have said; but it proves a strong suspicion in the mind of the prisoner, that, when the persons here, who were capable of being brought forward as witnesses, were brought forward to speak to facts, and those facts should be connected with the effect of the declarations made abroad, something would be proved, from which a Jury might infer, that the fact, of which he is guilty, is the fact charged upon this record.—

Gentlemen, you will allow me now to draw your attention to material and weighty observations, which have been made to you upon that sort of evidence, which has been termed, in the course of this business, confessional.—Gentlemen, I repeat to you again, on behalf of myself, and every individual in the Country, that the acquittal or conviction of a single prisoner is nothing when compared to the sacrifice of a great principle of justice. If, therefore, there is not legal clear evidence to con-

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vict this prisoner, if he is not “provable attainted” according to the true meaning of those words, which my Lord will state to you presently, you may perhaps see that there may be persons in this country who are in great peril from the machinations of others—you may perhaps see that persons in the highest situations are in the most peril, because they are not defended by that law, which says, that as to offences against our fellow subjects, one witness is sufficient. You may see all this ; but you must not therefore convict that man. The evidence must be such as the law requires to satisfy your consciences : whether it wisely requires such evidence, it is not for you to consider.—All that I ask of you on the other hand, is, that you will attend to the consequences of not convicting, if the evidence be legal—be sufficient in point of law—in a case of so much importance as this.

Gentlemen, it is very true that confession, as evidence, is open to all the weighty observations which have been stated from the authors, whose works have been quoted to you—They speak the language of common sense in strong terms. With respect to High Treason, the books go beyond what has been stated : if there was no evidence but confession, I am ready to admit, if that confession had been made before twenty witnesses, yet so much has the law guarded the party against the consequences of mere confession, where there are no facts and circumstances, established by testimony, which corroborates it, that it would be insufficient : the law has said that no man shall be convicted of High Treason, but upon his own confession before a magistrate, or in open court—Therefore, Gentlemen, if I had called these witnesses from France, to state to you that this party did make such and such declarations, and had proved nothing else in the cause, my Lord would have told me, the moment I had stated my case, that it was due from him to the justice of the Country to tell the prisoner that I ought to give no evidence against him—But it is far otherwise, when evidence of confessions is opened—not to prove the fact done, but to prove the intent with which the fact was done, an intent that never can be, or but seldom can be, collected otherwise than from

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such evidence : it is far otherwise when a great variety of facts and circumstances have been proved ; and when a confession is made, proved by a great number of witnesses, that confession consisting of very particular and very singular circumstances, and those very particular and very singular circumstances, indenting, as it were, and squaring with the facts, which have been proved in such a manner, that it is absolutely impossible, in the nature of things, that a man could make the confession, who had not been connected with the facts otherwise proved, and of which he gives an account in the confession.

Gentlemen, it is said, and said truly, in those authors, that there is great danger of perjury where you have nothing to go upon but confession. But this never applies to a case where a great number of facts and circumstances are proved, where the confession connects itself with those facts and circumstances, where the proof of those facts and circumstances by other witnesses supports the truth of the confession, and the truth of the confession aids, assists, and holds up the proof of those facts and circumstances, where the danger of perjury therefore is avoided by the very nature of the facts confessed, by the correspondence of the matter confessed with existing facts, where there are a great number of persons speaking to confessions, where the confessions are made at different and at various times, yet all corresponding and connected with each other as to the substance of them, where the confessions are aided by the demeanour of the party, and where the conduct of the party gives proof that the confessions he had made are founded in truth. To illustrate this, if Penny had been called to say, that, when he was on board the Elizabeth, in France, this prisoner said so and so, and nothing more had passed, that confession would have one degree of weight. When it is proved, not only that he said so and so at such a time, but that an application was made to a man, in the course of the voyage home, not to disclose the confession that he had so made, that circumstance adds another degree of weight. When the substance of the confession spoken to by that one individual, is spoken to by three or four other individuals, the matter acquires a still greater degree of weight, though,

though, after all, if you put them all, the confessions, together, they would not be sufficient evidence in the case of High Treason. But, when you have witnesses speaking to these facts, which are the overt acts, witnesses speaking to the facts of two or three persons applying to Hill, sometimes two, sometimes three, to the four brass-founders to whom applications were made ; and when it is proved that one of the persons engaged in each and every of these applications to the brass-founders, and in the application to Hill, was the prisoner at the bar ; when you have two witnesses to the facts, and the person is ascertained, and confession is added, which shews the intent with which these facts were done, I say the conspiracy is most completely proved according to law, supposing Smith, Le Maitre and Higgins are perfectly innocent, and not only the conspiracy, but the sole acts of this person, amounting to Treason, are proved according to law—What are these confessions? are they stated in a loose moment? are they casual confessions?—They are repeated confessions—in four or five instances : they make mention of circumstances as facts, which never could be mentioned at all, if they did not exist, and which are proved to have existed : it is proved, for instance, as the matter of the confessions import, that, in point of fact, applications were made to these brass founders ; that applications were made to Hill ; it is proved that drawings existed—drawings which described the form of an arrow, a barbed arrow, which described a tube, a feathered arrow, which described the parts of a wind-gun.—Now, Gentlemen, attend to the circumstances that are stated in all the confessions of the prisoner, the confession to Dennis, the confession to Le Bretton, the confession to Penny, the confession to Winter—Do not the confessions to these persons in Brest harbour most minutely correspond with facts, models, and drawings, proved to have been done and made in England. Perhaps you may not give Winter's testimony any considerable credit. I will state to you a reason upon which I submit you ought to give him credit, notwithstanding what you may think of the rate of his understanding. Is it not one of the most remarkable things that ever



happened, if Mr. Crofsfield had had no connection with the purpose charged in this indictment, that he, in Brest, should, in the very terms of his confession, describe, almost to the minutest accuracy, every thing which is depicted upon this paper: he speaks of an arrow—a barbed arrow; he speaks of a harpoon; he draws the form of it, to shew it, as feathered, to Winter: he speaks of the poisoned arrow; he speaks of the tube; he speaks of a wind-gun; he describes, not only the instrument, but almost every particular, which actually belongs to, and appears in the drawing now produced to belong to the construction of it.—Gentlemen, it is said, and said very truly, that the weight of confession depends upon the mind receiving the confession, and the mind conveying the confession. But did this ever happen before, in any case, that a man should in no less than four instances, address his confession, at four different times, to four different persons; that these four different persons should agree with respect to the state of his mind when he was conveying the confession, and that the state of their minds, when they were receiving the confession, was precisely the same, as to each and every of them. These four persons, understanding him to be conveying the state of fact as to these instruments, all agree that the impression upon their minds was that which they have stated to you to-day and yesterday, it was an impression that he was confessing his participation in the guilt now charged upon him.

Gentlemen, the declarations of persons in a case circumstanced as this is, are not, I apprehend to be considered as confession of facts: they are not confession of the facts; but they are declarations evidencing the intention with which the facts, otherwise proved, were done. Suppose, for instance, that a man was to point a musket towards his Majesty and any other person who had the honour to be attending him any where. Two witnesses swear to the fact, that that musket was pointed in such a manner, that a Jury is satisfied that it was pointed at his Majesty, and not at the other person; but, the instrument not being actually discharged, it remained to be tried with what intent it was pointed at his Majesty.—Is the state of  
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the law of this country such, that that fact of presenting the musket having been proved by two witnesses, evidence of declarations by the party with respect to his intent, connecting themselves, as Mr. Justice Foster puts it, with circumstances proved and with facts proved, is not sufficient to establish the intent?—Is it to be said, that, it having been shewn by the two witnesses, that the gun was so pointed, the testimony of twenty witnesses, proving that they had heard the man say that he meant to discharge it at the King to kill him, does not amount to legal evidence of his intent?—I cannot so understand the law of England: if I am wrong in that, you will hear from the wisdom that administers the law here, that I am so, and will undoubtedly give the prisoner all the benefit that results from that correction.

What was Crohagan's case, which my Lord may recollect? He said, "If I go to England, I will kill the King." The fact of his coming to England was proved: mere words do not amount to Treason: this fact was therefore proved: *quo animo* he came to England, was established by proof of his own declaration of the intent with which he would come: the fact of his coming to England, the overt act, it might be necessary to prove by two witnesses; but it is not in the nature of things that the law should be so absurd as that this should be held by it, that, where the fact is distinctly proved, as laid in the indictment, a man shall not be at liberty to explain his own intent by his own declarations, or that the law should shut out evidence of those declarations, when other witnesses speak to them.

Having stated to you what I conceive to be the rule of law with respect to confessions under the correction of my Lord, the case, I take it, as proved against the prisoner, is this—That he was concerned, together with Upton and others (whether Le Maitre, Smith or Higgins belonged to the conspiracy or not, is not material for your consideration) in the forming of an air-gun; that is, to speak in the technical language of the law, his heart compassed and imagined, at least, the formation of an air-gun; and here I go most distinctly along with the

learned Judge, who intimated yesterday, in strong and express terms, and which perhaps he will repeat again to you to-day, that if we get no further than to prove that Mr. Crossfield went to the brass-founder's, and went to Hill's, and made a model, and meant to fabricate an air-gun, and did begin to fabricate it, we have no case of Treason against Mr. Crossfield. We must make out that these measures were taken with intent to effectuate (whether sufficient or not to effectuate it, will hardly be necessary for me to discuss after the evidence given by Mr. Mortimer) with intent to bring about the death of the King.

Now, with respect to the fact, that he was concerned in the fabrication of this instrument—it is beyond a doubt that three persons were at Dowding's; that three persons were at Flint's, is unquestionably proved; that three persons were at another brass-founder's, is unquestionably proved; and that two went, I think, to Bland's, Palmer not being one of the men, is also beyond doubt. Palmer proves Crossfield to have been in that party: it is proved therefore beyond all doubt, if Palmer's evidence be taken to be true, that Mr. Crossfield was one of the persons, who was concerned in the fact. The fact is proved by three witnesses, viz. Dowding, Flint, and Bland, and by another brass-founder. The fact of applications to Brass-founders to make such an instrument as this, is proved by four witnesses; and if it be proved that Mr. Crossfield was one of those persons, I take it, if we stop there, the case, as to fact, is made good. Bland's evidence is extremely confirmed by Palmer's evidence; for Bland states that two persons came to him, the one of whom was Upton: he did not know the other person. Palmer states in his evidence, that two persons went to Bland's; that he came to Bland's after these two persons, and that the two persons, who were there, were Upton and Crossfield. Besides this, it is proved in point of fact, that all the three were at Hill's; and Palmer proves the fact, that Crossfield was one of the persons who was at Hill's. What was done at Hill's, it will be material for you to attend to, when my Lord comes to sum up. There are more than one person



to speak to one or other of the facts charged ; that is, to the fact of going to the first brass-founder's, then to the fact of going to the next brass-founder's, to the fact of going to the third and fourth brass-founder's, and to the fact of going to Hill's ; and Hill states, not only that Upton took part with respect to the drawing, but he expressly states as I took his evidence (if I am incorrect, I hope my Lord will set me right, and that you will not do me the injustice to suppose I am intentionally incorrect) that the stranger, who, it has been proved, was Crofsfield, did something to the drawing, as well as Upton. So he states, though it is not necessary to prove that fact, because I apprehend there can be no manner of doubt, that, in point of law, if the purpose of Upton was to fabricate this instrument, with the intent which we have charged in this indictment ; and if Mr. Crofsfield, knowing that purpose, of which it will be for you to judge, attended him to these places, and went through the consultations along with him, he is just as guilty as if he had been the spokesman upon each and every one of those occasions.

God forbid, Gentlemen, that I should press the case more strongly than I ought ; but I must remark that these witnesses, the brass-founders, speak, one after another, to circumstances that require observation. One tells you, that the persons who came, said that the use for which the instrument was to be made was a secret ; another seems to me to prove that their enquiry about the expence, and their enquiry as to the time it would take in making, were anxious. For what particular purpose it was to be made, the prisoner has not explained, nor why there should be any anxiety about the time to be employed in making it. But when that time is made a circumstance for enquiry, it seems to me that the instrument must have been to be fabricated to be ready at some time, which the party was looking to, for some purpose then to be carried into effect.—Hill said it was to be for an electrical machine : to one witness they represented it, you see, to be for a secret purpose ; to another, the use of it is falsely represented. All these witnesses speak of

a tube ; and the declarations of Mr. Crossfield, made in France, mention a tube, as well as a barbed arrow.

Gentlemen, as to the evidence of the witnesses to the prisoner's declarations abroad, is it possible that that evidence can be false? Upon the supposition that it is not true, is it not the most marvellous thing that ever happened in the course of human events, that the circumstances detailed in the declarations spoken to with respect to the existence of a tube, with respect to the existence of the intention of employing an arrow—a barbed arrow—a feathered arrow, in the form of a harpoon—should every one of them receive the semblance of truth so strongly from the fact that Upton, who was along with them at these brass-founders' houses, should actually have in his possession such a brass tube as was mentioned; from the fact that this same Upton should have in his possession this drawing of an arrow, in the minutest circumstance tallying with the effect of those declarations, which the witnesses from France inform you were there made by the prisoner?—Is it to be accounted for, in the nature of human things, that the prisoner could state himself, in these declarations, to be one of the persons to assassinate the King with instruments, such as he describes in those declarations, and that instruments, or models or drawings of instruments, tallying with that description, should be found in the possession of Upton, who was with him when he called at these brass-founders' houses, if the prisoner did not mean to speak that which was the truth, and which he knew was the truth? Such a coincidence of circumstances seldom happens to make good the truth of declarations, and declarations are seldom found to correspond more exactly with circumstances which actually existed. Such an instance very rarely occurs of declarations so made good by the actual existence of facts, as that which is furnished by this case.—Then, Gentlemen, this comes at last simply to the question of intention. I before mentioned that I had some observations to make to you about our not calling the captains. Gentlemen, it is perhaps one misfortune, if I dare to use such a word with respect to any provision of the law of my Country; but it certainly is a circumstance

stance possibly to be occasionally regretted that the law has ordained that the prosecutor shall not add to the list of witnesses which he has delivered to the prisoner. I am therefore bound, in the discharge of the duties of my office, to determine between the difficulty of trying persons upon such evidence as I can bring forward, or the delaying a trial without a possibility of determining when I shall be able to bring forward more evidence.—I add, Gentlemen, that in this case of High Treason, I meant most studiously to abstain in opening it (and I hope my Lord will go along with me in thinking that I have not failed of my purpose) most studiously to abstain from stating to you the substance of any conversations, or declarations, or language, seditious or not seditious, which this prisoner might have used when he was abroad, or when I could have placed him in other situations, if they had not a direct application to the subject now before you, and did not amount to declarations upon the very point now before you.—Perhaps, Gentlemen, I did the prisoner no injustice in that respect. I might have known—I do not inform you whether I did or not—I might have known that I could have called a witness to prove the fact of the prisoner's singing that song of "Plant, plant the tree," some part of which has a very strong application certainly to a general purpose, hostile to the existence of Kings—It is, to state it altogether, the most complete epitome of anarchy that I ever saw in my life. You will observe, if you cast your eyes over it, that it contains, in the shape of a song, the averment of an overt act of every species of Treason known to the law of England. I did not wish originally to bring forward such facts as these; I thought it not otherwise than fair, as between the Country and the prisoner, to abstain from doing so.—I know that there are individuals in the Country, who may blame me for not pressing prisoners up to the extent, in which they may wish that I should do so. I am satisfied, upon reflection, and I have formed my own determination upon that subject, that a lenient administration of the law, is the wholesome and salutary administration of the law: it is that which is congenial to the character of Britons; and I am persuaded that a miscarriage of



of justice by lenity, will never deeply affect the administration of justice in the Country. On this account, I did not choose originally to bring forward such evidence; but when Captain Collins was called, and when I was willing to give credit on behalf of the prisoner to this extent—that you should believe that every man, whom I either did not call, or could not call, had nothing to say but what was favourable towards the prisoner. When Captain Collins was to be brought forward to give such an account of the demeanour of the prisoner abroad, as I was taught to expect, from what had been opened, he would have given, it was my duty to ask Mr. Cleverton, when he had mentioned the circumstance of the republican songs (for I would not originally have introduced it) whether that song was not sung by the prisoner. It is now become part of the evidence; it is a declaration in evidence of the general sentiments of the prisoner, if you think he entertained the sentiments that song expresses; and I say that that song amounts to distinct evidence that the writer of it, or he who adopts its sentiments, (to what extent this prisoner adopted them, is for you to determine, and not for me to decide) is a man not only not friendly to the constitution of his Country, or to the being of a King, but capable of proceeding to any extent in overturning every establishment, civil, and religious, in the Country. I think it my duty, however, on the other hand, to say to you, with respect to all persons not produced, who either could be produced before I delivered my list of witnesses, or could not be produced because I had delivered my list, you must do the justice to the prisoner to persuade yourselves, that no one of them could have said any thing, other than favourable to him.

But, Gentlemen, when that is done, it is for you to decide this great case. The direction which you may receive here, in matter of law, and as to the sufficiency of the evidence, if wrong, may be corrected. It is the boast and glory of the constitution of England, that we do not in this Country proceed upon those foolish theories of perfection, which are not made for man. The constitution of England is founded upon principles which regard those who are to live under it, as being but men.—

men.—There are no parts of our institutions, in which we do not acknowledge the infirmity of the wisest, and the highest, and best of those who may be called to administer them.—In the administration of justice, prosecutors and juries, we acknowledge, may err; and it is perhaps the highest commendation that can be stated of those sitting above me, that they are always anxious to set right the effect of their mistakes, and are never influenced, in the execution of their duty, by a false pride to be unwilling to see, or, seeing, to correct their errors.—I have said here, that you have a clear case before you. You will have the Judge's direction in law: if you are satisfied by that direction, as to the matter of law—if you are convinced by it, that the evidence offered is competent and legal evidence, to be offered as proof, I must then, Gentlemen, (I am saying this in circumstances that distress me; but I am bound to do my duty firmly to my Country, however painful it may be to myself,) I must then call upon you to lay your hands upon your hearts, and either to say that the prisoner is guilty, or that these sailors, who come from Brest with the information which they have given you, are, every one of them, perjured.

Gentlemen, the law of this Country, in its benignity, wishes every prisoner a good deliverance: it is the humane language of the law—after he has pleaded, it says to him, God send you a good deliverance.—My prayer is, that you may be able to find in this evidence, that which will justify you to God and your Country in acquitting the prisoner; but, if you cannot find that in the evidence, it is likewise my duty to my Country and to every individual who lives in it, to entreat that you will most seriously recollect in what a situation of peril, danger and hazard, incapable of being described, you place the Country, and the Sovereign of it, if the case be such as ought to satisfy your consciences, and, being such, you should hesitate about pronouncing the verdict of the law! may God direct you in the execution of this duty! I am sure the Country will be satisfied that you mean to execute it with integrity; and, feeling that confidence, I shall rest upon your conclusions with the most perfect satisfaction.

*Mr.*

*Mr. Adam.* My Lord, my learned friend Mr. Gurney desires me to state one circumstance that he omitted to mention, which accounts for Mr. Crossfield's knowledge of this supposed conspiracy to assassinate the King by the means of an air-gun and a poisoned arrow—that immediately upon the apprehension of Smith, Higgins and Le Maitre, all the circumstances to which Upton had deposed were published in the news-papers.

*Mr. Attorney General.* I do not know the fact; but it is very probable.

*Mr. Justice Grose.* I dare say they were.



## SUMMING - UP.

LORD CHIEF JUSTICE EYRE.

Gentlemen of the Jury,

This prisoner, Robert Thomas Crossfield, stands indicted, together with three other persons who are not now upon their trials; namely, Paul Thomas Le Maitre, John Smith, and George Higgins, for that they did maliciously and traitorously compass, imagine, and intend to bring and put our Sovereign Lord the King to death.—This indictment states, as by law it must do, those leading facts which are the evidence of that compassing and imagining, and in the language of the law are called the overt acts; that is, the acts by which the secret intention is made manifest. Those acts are required to be proved by two witnesses; *i. e.* by two witnesses to some one overt act, or by one witness to one overt act, and another witness to another overt act of the same species of Treason.

The different acts which are charged upon this prisoner, and the other prisoners, from whence this charge of High Treason is deduced, are, first, that they, together with others, conspired, combined, consulted, consented, and agreed to procure, make, and provide, and cause to be procured, made, and provided, a certain instrument for the purpose of discharging an arrow, and also a certain arrow to be charged and loaded with poison, with intent to discharge, and cause to be discharged, the said arrow so charged and loaded with poison, from and out of, and by means of the said instrument, at and against the person of our Lord the King, and thereby to kill and put to death our said Lord the King. You will observe, that this is a special and complicated description; the overt act consists of a conspiracy to prepare an instrument of a particular description, and for a particular purpose: the particular description is, that it should be an instrument to discharge an arrow, but it is not every arrow according to this description, it is an arrow to be loaded  
with

with poison, which arrow is to be discharged by means of this instrument---this is the first overt act charged in this indictment.

The next overt act charged is, that these persons employed and engaged one John Hill to fashion two pieces of wood, to be used as models for making and forming certain parts of the said instrument from and out of which, and by means of which, the said arrow was so intended to be discharged. This overt act does not go to the whole extent of the former, for it only charges the persons indicted with the particular fact of having employed Hill to make two pieces of wood as models for forming parts of the instrument, but still the instrument referred to is the same instrument as specially described in the former charge, and the purpose referred to is the same special purpose. It therefore amounts to this; that if they did not conspire to form the whole instrument with the arrow loaded with poison, yet that they did employ Hill to make two pieces of wood as models for a part of that instrument which was to be employed in discharging the poisoned arrow. It also adds, that they delivered to John Hill a paper with certain drawings thereon, drawn and designed as instructions and directions for making such model.

The next charge is, that they consulted among themselves and others concerning their traitorous killing and putting to death the King by means of the instrument aforesaid, and how and where such killing and putting to death might be most readily and effectually accomplished.

This is so stated because if persons who conspire the death of the King, and had meant to do it in this particular way, by procuring such an instrument to be framed, had only once consulted how they were to bring it about. The mere consultation is certainly in law a good and sufficient overt act to maintain the charge of compassing the death of the King; this you see would rest upon consultation only.

The next charge is, that they employed Thomas Upton to assist in making the said instrument, out of which the said arrow was so intended to be discharged at and against the King for the traitorous purpose aforesaid; and that they delivered,  
and

and caused to be delivered to Upton, a certain paper with figures and drawings thereon, drawn and designed as instructions and directions for making such instrument, and also certain pieces, that is to say, two pieces of wood as models for the making and forming certain parts of the said instrument.

The next overt act is, that they delivered to Thomas Upton a certain metal tube to be used by him in the making and forming the said instrument, out of which the said arrow was so intended to be discharged.

These different overt acts have all of them a connection in one respect or another with the particular instrument especially described in the first of the overt acts, which was an instrument to be used for the purpose of discharging an arrow, which arrow was to be poisoned. But I suppose those who have the conduct of this prosecution, aware of the difficulty that there might be in proving that instrument in the precise form in which they have there stated it, and also that it was to operate by means of an arrow to be poisoned, have, in the subsequent overt acts, very much narrowed the description, and they have therefore contented themselves with stating, that these persons did conspire together to procure an instrument to be made, not saying of what kind, nor describing its operation, but an instrument to be made for the purpose of killing and putting to death the King, and they then follow that up with overt acts similar to those already stated, only referring to the instrument as described in this latter part of the indictment. In substance there are therefore two distinct charges, one a charge of their having been concerned in consulting about framing, and in framing either the whole or parts of the instrument specially described for the purpose of throwing a poisoned arrow, the other that they have been concerned in procuring an instrument, though perhaps not for the purpose of throwing a poisoned arrow, yet intended and calculated in some manner to procure the death of the King.

Gentlemen, this is the substance of the indictment, and the evidence on both sides has been laid before you, and it is a satisfaction to me to find that no question of law can possibly arise



arise in the case, except it be a question whether there are or are not two sufficient witnesses to the overt acts charged, for as to the charge of compassing the death of the King, it is perfectly well understood; and what are and what are not overt acts of that charge, are also well understood, and it has not even been questioned whether any one of these overt acts, if proved, would be a sufficient overt act of that charge of conspiring the death of the King; they are indeed all of them acts directly and immediately conducing to the purpose of an attack upon the King's person, to the horrible purpose of deliberate assassination of our most gracious Sovereign. I have now two duties imposed upon me; the first is, to recapitulate the evidence as correctly as I have been able to take it; the next is to point out to you for your assistance the application of that evidence to all, or to any of those overt acts, some or one of which must be proved in order to constitute proof of this indictment.

The first witness called on the part of the prosecution was John Dowding; he said, that in September 1794, he worked with a Mr. Penton, a brass-founder, No. 32, New-street-square; that on the 8th of September, he was called into the counting-house, there he found three men, one of whom was lame, and whom he has since found to be one Upton; they asked the witness whether he could make them a tube? he enquired what sort of a tube? they said it was to be three feet long, five-eighths of an inch in the inside bore, seven-eighths the outside, and one-eighth of an inch thick; they said it must be quite perfect, and quite a smooth cylinder in the inside; and they asked what the price of it would be? he told them he could not tell: they asked if he could tell them within a few shillings? he said no, he could not: he shewed them a piece of a cylinder, they said that would do provided it was thicker, and by being thicker it would be smaller in the bore; the witness said he must make a tool on purpose if they wanted to have it quite perfect in the inside, and he could not answer for what the expence would be; if they would tell him the use of it he should be better able to judge how to make it, and would make it much better for their use: the answer was from  
Upton,

Upton, he said that that was a secret ; but he said that the other persons seemed to join in what Upton then said ; he said he did not undertake the job ; he told them that he was busy, and it was not worth while to undertake it : he said they then produced a tube which they had before bought at his master's shop which they returned, and took the money back, a small sum, I think about eight-pence or ten-pence.

He was asked upon his cross-examination as to his knowledge of the other two persons, he said he had never seen them before ; that they all stayed in the place while he was talking with them ; that there were women lackering brass in another room, but he does not know that any one of them went out to speak to those women ; and there is no evidence of any thing of that sort ; he said he could not charge his memory with any thing particular that was said by the other men.

The next witness, Joseph Flint, is a brass-founder, in Cock-lane, Snow-hill ; he said, that on some day in the month of September, but he could not fix the day, after dinner, he was called down by his apprentice, and he found three persons present, one of whom was lame, he observed he limped as he went out : they asked for a long pistol barrel ; he produced them a musketoon barrel, but they said that would not do : they did not want it plugged up at one end ; he told them he supposed they wanted a straight cylinder ; they said they did, that they wanted it to be five-eighths of an inch diameter in the bore, and one-eighth of an inch thick ; they said if he would cast and bore it, they would finish it themselves : he told them he should not undertake it unless they brought him a pattern ; one of them asked whether a rocket case would not do ; he said it would, provided the ends were plugged up ; he said at that time the length of the instrument was not mentioned : one of them asked the witness how long he would be making it ? he answered, about three days. He said the lame man seemed to be the principal, but that he was not the man who asked in what time it might be finished, therefore one of the other men must of course have asked that question. He said, in September 1795, he saw Upton, but he could not take upon

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himself to say whether that was the lame man he saw at his house.

The next witness is James Bland, a brass-founder, in Shoe-lane, Fleet-street; he said that in the month of September 1794, but he could not fix the day, two men came into his shop, that in about five minutes after they were gone out a third came in, and asked where those two men were gone? the witness shewed him which way they went, and that man followed them: he said that when those two persons were in the shop, they asked him for a tube, or a barrel, he told them if they wanted a barrel they must apply to the watch-makers, if they wanted a tube to the drawers; he said that they went away, and then it was that the man came in and asked for the two gentlemen, and followed them; he said that the third person he believes was Palmer; he told them they were gone down the lane, and he went that way; he did not then know Palmer; he saw Palmer since before the Privy Council, and he said one of the others was a lame man.

The next witness is David Cuthbert, who lives at No. 9, Greyhound-court, Arundel-street, he is a mathematical-instrument-maker; he said he knew Upton, he had called upon Upton to subscribe to the relief of the wives and children of persons in custody some time ago for High Treason; that he had no memory of what had passed at that time. The second time he called to know how the subscription went on, and they had some conversation about the Corresponding Society. Upton, he said, was a watch-maker, and he gave him an invitation to come and see an engine of his, which was an air-pump and an air-gun; he said he explained them to Upton; that Upton came again next day with another person; he said Upton had displeased him with the turn of his conversation, and he did not like him nor his acquaintance. The other person talked of being fond of shooting, said he had met with an injury by the explosion of a gun, and had lost three fingers, but the witness said he did not look to see whether that was so or not, and there is not in the evidence any thing which has served to apply that circumstance to either this prisoner, or to any other person; he said that man handled the gun: Upton asked the witness whether he wanted a job;



he said he had more business than he could do: he said he had no conversation with the other about the properties of the air-gun, and never saw that man since; he said he should not have known him if he had met him at the end of six hours; he does not know that he should have known him if he had met him a minute after, but he took him to be a much taller man than the man he afterwards saw at the Privy Council; that Upton, in his judgment, did not appear to be then acquainted with the properties of air.

The next witness is Peregrine Palmer, he describes himself to be an attorney, in Barnard's-inn; he said he has been acquainted with the prisoner sixteen years, that he was a physician; that he had resided in a number of places during his acquaintance with him; that the last place he knew him to lodge at was Dyer's-buildings; that they were upon terms of great intimacy, and were both members of the Corresponding Society; he had seen him there, and believed he was a member—the witness himself was a Delegate and Chairman of a Committee; he said he might have seen Crossfield there three or four or five times, that they were of the same division; he said he knew Upton; that in the beginning of September 1794, he accompanied the prisoner, Crossfield, to Upton's; he said that they all went together afterwards to a house in New-street, or New-street-square, which he thinks was a brass-founder's, what passed there he does not know; Upton appeared to him to have some business with the brass-founder; they were there but a few minutes, but he can recollect nothing; as to himself, he said there was nothing transacted by him, that it was Upton's business; he said that he had not the least recollection of what passed; he said he would not swear that nothing was produced to that man, but he does not know that there was; that from thence they went to another brass-founder's in Shoe-lane, he himself did not go into that house at first, they were in the house a minute or two before him; he went in to enquire after them, they were gone; he overtook them in the same street, and then they went to Cock-lane, to a person in the same line of business; they all three went into that house,

and some directions were given by Upton about something in the way of Upton's business ; he said he had no recollection of any thing that was said about a brass tube or a model, but that there might be such a conversation ; that he does not recollect having the tube shewn to him at the Privy Council ; that he had seen Crossfield's writing, but could not say whether certain papers produced were of his hand writing ; he does not take upon himself to swear that they were ; on the contrary, he says he is not sufficiently acquainted with the hand writing to form any belief upon the subject ; he said some papers were shewn him at the Privy Council, he does not recollect that ever he saw them before ; he said they were but a few minutes in Cock-lane, he recollects nothing that passed ; he said they went afterwards to Hill's, a turner, in Bartholomew-close, he recollects Upton's giving some instructions to Hill, something of a model or a pattern was mentioned, and he thinks he produced a drawing as instructions for something that Hill was to do, but he cannot say whether it was left or not ; he said he thinks that Upton made it at the time in the house ; he has no recollection of any brass tube being produced there ; he said he thought they parted somewhere thereabouts, and that the meeting with Upton was accidental ; he said Upton lived in Bell-yard, that he might have seen Crossfield once or twice at Upton's before that ; the prisoner at that time lived in Dyer's-buildings, and lived there at the time when Upton's information was given ; he said that he and Crossfield went together soon afterward to Bristol ; that it was many months before the proclamation was issued for apprehending Crossfield, he thinks it was in the month of October 1794 ; he said the prisoner had a wife, but he believes she did not reside with him in Dyer's-buildings ; he said he left the prisoner at Bristol, as he understood he had some idea of settling there ; that he came back to London again about the time of the witnesses being examined before the Privy Council ; that he did not then lodge in Dyer's-buildings, nor does he know where he did lodge ; he thought he received one letter from him from Bristol, but did not believe he had written to Crossfield there ; he said

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he might see Crofsfield after his return two or three times at his own chambers; he after that ſaw him no more till he ſaw him under examination at the Privy Council; he ſaid Crofsfield was much in the habit of coming to his chambers, they were upon terms of great intimacy; Crofsfield was in an ill ſtate of health at that time, and was forced to take large quantities of opium; that Crofsfield was acquainted with Upton; he thought Crofsfield became acquainted with Upton by ſeeing him at the Correfponding Society; he ſaid he ſaw an electrical machine at Upton's ſhop; he ſaid Upton became diſgraced in that Society, that Le Maitre, one of the perſons now charged in this indictment, was particularly offended with him; he ſaid he had attended the Society in Auguſt and September 1794; he then ſtated the occaſion of Upton, and himſelf and Crofsfield, being together that day; he ſaid that Upton had a watch of his to repair; he thinks he and Crofsfield had dined together ſomewhere in the neighbourhood of Temple-bar, and he meant to call on Upton for this watch; he ſaid he had no particular recollection who it was that ſpoke to them in New-ſtreet-square, whether it was the maſter or the ſervant; that his reaſon for not going into the ſecond houſe was, that he had a neceſſary occaſion to ſtop; he ſaid that he and Crofsfield meant to have gone together into the city, and happening to call upon Upton for the watch, Upton ſaid he was going that way, and would accompany them, which was the occaſion of their being together that day; he ſaid he ſaw Crofsfield publicly about the time of Smith and Le Maitre being taken into cuſtody; that he and Crofsfield went ſoon after that to Briſtol, that Crofsfield had an intention three or four months before to go to Briſtol, that he meant to analyſe the waters, and if he found any ſucceſs he thought of ſettling there; that he ſaw him every day while he ſtayed at Briſtol, and that he appeared there as publicly as he had done any where elſe; he thinks Crofsfield remained at Briſtol after him two months, and returned to town about the time that he, the witneſs, was examined before the Privy Council; he ſaid, as well as he recollects, the laſt time he ſaw Crofsfield, was on the laſt day he was before the Privy Council, in the month of January; that the reward for



apprehending Crossfield was published a considerable time afterwards; he said, upon his further examination, that when he was first examined before the Privy Council, he mentioned his knowing Crossfield, and undertook to the Privy Council to endeavour at least to find Crossfield; however, he says notwithstanding that he did not produce Crossfield at the Privy Council, he thought he saw him in the early part of the last day when he went to the Privy Council; that when he was first examined, he told Crossfield of the circumstance of his (Crossfield's) attendance being required at the Privy Council, and of his having said he would endeavour to produce him, but Crossfield said he was going abroad as surgeon to a ship, and that his staying in town might be the means of preventing his voyage, and therefore Crossfield did not choose to go, and he says he did not mention to the Privy Council his having seen Crossfield.

The next witness, John Hill, said he was a member of the Corresponding Society, of Division No. 6, that he knew Upton a little, and he knew Palmer; that Upton, Palmer, and another man, came to his house in Bartholomew-close, in September 1794; Upton asked him whether he could turn in wood? he said yes; he then asked him if he was ready to do a job for them? he said yes: Upton began to describe what he wanted; the witness said he did not understand him; that Upton then gave him a sketch, he believes the sketch which is now produced in evidence, and he thought it was made in his presence, and upon a piece of paper that belonged to him, and with his pen and ink; he asked Upton what it was for, Upton said it was for something in the electrifying machine way; he was to take it to Upton's house, and he would see him paid; he said the stranger did something towards making that sketch, what it was in particular he could not recollect, but he thinks he did something; that it was done principally by Upton's direction; he said he does not recollect that Palmer did any thing to it; he said a piece was to be made straight like a round ruler, and there was something to be done from it in brass work; he said he carried the models home to Upton's, three days after; he found him at cards, and delivered the models to him; this he said was about the middle of September;

ber; he said there were some imputations upon Upton in the Corresponding Society; that Higgins, one of the persons indicted, said something which affronted Upton, and they were about to investigate Upton's character, when he chose to save them the trouble by taking himself away; that Higgins said, as he went out, there he hops off: he said, that after Upton was apprehended, he one day called upon the witness; they were here going to enter into evidence of some declarations that were made by Upton, but I thought it not proper to receive that evidence under those circumstances.

The next witness was John Le Bretton; his account is, that he sailed in the Pomona, a South-Sea Whaler, from Falmouth, on the Southern fishery, round Cape Horn; the prisoner came on board a week before they sailed from Portsmouth, which was the 29th or 30th of January; that the prisoner was surgeon, and was called the Doctor, he said he did not know his name; they sailed upon the 13th of February from Falmouth, and were taken on the 15th by a French corvette and carried into Brest; they arrived there upon the 23d; he said that when the list was made out of the prisoners to be sent on shore at Brest, the prisoner wrote his name Robert Thomas Crossfield, and went in the first number of the prisoners; that when he went away, he wished them a good bye, and said he was happy in going to France, he would sooner go there than to England; he afterwards saw him in the corvette; he said he heard the prisoner say he was one of those who invented the air-gun to shoot or assassinate his Majesty: the witness asked him what it was like? the prisoner answered, that an arrow was to go through a kind of tube by the force of inflammable air, that he described it with his finger to be like one of their harpoons; he said that when this prisoner was to go home by the cartel, he then gave his name in H. Wilson; that he helped to make out the list, and he put down his own name H. Wilson: he also described himself in that list as having been captured in the Hope, and as being a passenger; he said that there were twenty-three men belonging to their vessel; that Mr. Charles Clarke was the Captain, who likewise came back in the cartel; he was asked about Clarke; he said

he saw him at Christmas, and he, as well as he recollects, was not examined before the Privy Council; he saw him afterwards at Mr. White's, and on board the ship, and at his lodgings in Wapping; he said he once saw him at Mrs. Smith's, but that he did not then lodge there; that he saw him when he was fitting out his ship, and may have talked with him, but has no recollection of any particular conversation about Crossfield, excepting that he said he had been examined at the Privy Council; he did not inform him of the subject of his examination, and he says he did not ask him whether he had not overheard his conversation with Crossfield; that you see comes to be material, because Mrs. Smith has been called for the prisoner, in order to fasten a contradiction upon him with respect to that circumstance; he said Captain Clarke was never so inquisitive as to ask him what he had said upon his examination, nor did he ever tell him; he said he had not seen him above two or three times, and he was now out of England; he said that he was frequently in company with Crossfield at Portsmouth before they sailed, he was on shore with him twice on two different evenings: the witness said he was boat-steerer, an officer on board this vessel; he went on shore at Portsmouth to buy necessaries, and he said Crossfield appeared there publicly; he said the ship was loaded with casks of water and provisions, and the Captain's private trade, and also a little private trade of some of the officers, what that was he does not take upon himself to know; they put into Falmouth by stress of weather on the 2d of February; they sailed again on the 13th; Crossfield was never on shore at Falmouth, or at most but once; at first he said there were only their ship's crew on board the French ship after they were carried into Brest, and that they were all concerned in a scheme to seize the French ship, Crossfield and all; there were some foreigners on board who would not agree to it, and therefore the scheme failed; they first went into the roads at Brest; they had no concern with any other English prisoners till they were put on board the prison ship the Elizabeth; that Crossfield was one of those who was put on board her; he mentioned two other vessels lying near them, the L'Achille and the Normandy; that Crossfield spoke  
French,



French, and sometimes served as an interpreter; Captain Cleverton, the master of another ship, was on board the prison ship; he thinks Mr. Cleverton messed with Crossfield; there was also a Captain Collins there; whether he was on board or not he does not remember; he was afterwards removed from the Elizabeth to the Peggy; that the Active Increase was lashed to them; that there were three prison ships lashed together, and that they were all on board; Mr. Cleverton was at the hospital for some time; that Captain Yellowly commanded one of the cartels, and he said he knew that the prisoner's name was Crossfield, and he made no secret that he knows of about his name; he said their private trade was in a few trunks, some part of it was sold on board the prison ships, by the indulgence of the person who took them; that they permitted the crew to take possession of some part of the private property. He was asked whether he had not some words with Crossfield about it, he said no, and that he never heard of Crossfield's threatening to inform the under-writers of this transaction, about the private trade which was said to have been in this way embezzled, and which was supposed to be insured. I do not see that any thing turns upon that; there is no contradiction introduced.

Thomas Dennis, the Chief Mate of the Pomona, said, that he sailed in her from Portsmouth; that the prisoner sailed on board that vessel as surgeon; that he went by the name of the Doctor; that he did not rightly know his name till he got into France; that he had never seen the prisoner before he came on board; that the night after they sailed from Falmouth, the prisoner said that if Pitt knew where he was, he would have sent a frigate after him; that Pitt was to have been shot going over Westminster Bridge, but had avoided it by going another way; that his Majesty was to have been assassinated by a dart blown through a tube, and that he knew how the dart was constructed, and something he mentioned about a harpoon; he said, that when they were taken by the French, he shook him by the hand, and said he wished they might get safe to England, he was happy he had got out of England, and was going to France. This witness mentioned the circumstance spoken of by the other witness,

witness, that when the list of prisoners was delivered in at Brest, he delivered his name R. T. Crossfield, and said he had no occasion then to be ashamed of his name. When the list was made out for the exchange of prisoners, and the prisoners were to go to England, he said he changed it to H. Wilson, and described himself as being captured in the Hope brig, and this he did in his own hand; when the list was called over, he answered to the name of Wilson, and walked aft. The witness was afterwards called before the Privy Council, in order to give them information respecting this transaction.

Upon his cross-examination, he said, they got into Brest upon the 22d; that there was a plan to rise; he thinks Crossfield had engaged to be one; Crossfield was one of those who messed in the cabin; and Crossfield and the rest that were there were to seize the ship; he said that there were three prison ships together; the Hope brig, Captain Falconer, he said, had been taken within a day or two after they were taken, and Mr. Cleverton was in her; he said that some of their private property was saved, nothing of his was insured; that Captain Clarke might have something insured; what were saved were sold on board the prison ships; he said he had no words with Crossfield on that account, nor any quarrel, nor did they converse much; that his station was the deck, and the Doctor's was below; that he had heard Crossfield had said it was owing to his negligence that the ship was taken; Crossfield had never said it to him; he said Crossfield was not removed from the vessel on account of a quarrel between him and Le Bretton, and there is no evidence of any such thing. He was asked about the state of their provisions, he said they had bad provisions, but with their money they could purchase good; he said there was a scheme for his obtaining his liberty, by getting a certificate that he was an American, and which Crossfield was inclined to assist him in; that Crossfield meant to get his liberty by insisting that he was a naturalized Hollander; and that he wrote to Leyden for the purpose of getting the necessary evidence to support that pretension; he said Crossfield said he had interest enough in France to procure all of them their liberty; he said Crossfield had a  
good

good deal of levity about him, and talked and rattled a good deal.

James Winter described himself to be the owner of the *Suffannah*, a vessel from Newfoundland to Spain, on board of which he was with his property, and was captured and carried into Brest; he was taken upon the 6th of December, and arrived at Brest upon the 13th, and was on board the prison ship for some time; that upon the 20th of March they were put on board a cartel in Landerneau River; that Crossfield came on board and dined, this was on the 2d or the 3d of April; Captain Yellowly introduced the prisoner by the name of Crossfield, but the prisoner laughed, and said that his name was not Crossfield, but Tom Paine; he said that after supper he sung seditious songs; then he said that he had shot at his Majesty, but unluckily had missed him. At another time the witness asked him where it was that he had shot at the King, the prisoner said it was between Buckingham House and the Palace; he said that this kind of conversation passed every day for five months; the prisoner did not say with what weapon he had shot at him, but said he would shew the witness something like a pop-gun, about a foot and a half long, made of iron; he said he had put poisoned darts into this gun, and had shot at a cat, and the cat expired in great agonies in a short time; that he said it would kill a man at thirty yards distance, and nobody could see that he had done it; that he repeated these kind of things fifty times; the witness said there were nine of them that dined together; that this sort of conversation frequently happened; that the prisoner shewed him in what manner this arrow was made; he said that when the arrow struck the part it was aimed at, the poison would come out of the dart; that Crossfield said he was the person who ordered the poison to be made up, and that he got it at a chymist's shop; that Crossfield said he had fired at his Majesty, but did not say with the dart, but it was damned unlucky he had missed his aim; he said nobody was present when he shewed the witness in what manner this arrow was to act; that it was in a private conversation between them; but he said once in August, afterwards he corrected himself to July, Crossfield said he hoped he should



should live to see the day when the blood should be over his ankles in the streets of London, of the King and his party; a gentleman present said God forbid, matters may be done more easy. Then the witness went back again to what he had stated before, and said, that he went to the chymist's himself, and ordered the poison to be made up, and with that he had killed the cat; he said Crossfield said that after he had shot at his Majesty, he was obliged to make off to Portsmouth, where he had got on board a South Sea Man; that two of the King's Messengers were after him; the witness said that Captain Collins wished to have the cutting off the King, and Pitt, and the Parliament; that Crossfield said have patience, I hope to have the cutting off some of them myself by and by; he said that on the 27th of August, when the cartel left Brest, Crossfield said every thing is now settled to my satisfaction; one of the Captains endeavoured to stop his mouth, and prevent him from talking, but he said the French had given him great encouragement; that from the 18th or 19th, down to that time, the prisoner had been very close; he said they were three days on their passage, and they landed at Mevagissey; that nothing passed in the course of the passage material. The witness went immediately to a Justice of Peace, and gave information; upon that information, he said, a warrant was granted, but before the warrant could be executed the vessel was gone to Fowey, and there it was the prisoner was apprehended.

Upon his cross-examination he said, that he was fifty-nine years of age; that he had resided at Newfoundland; that they were part of the time on board the Berwick, Captain Alexander, nine of them he mentioned, the two Byrons, Collins, and several others that came over in the cartel; he said he told the Justice the names of those persons, and that they were of the society of Crossfield; he mentioned their landing at Fowey; he said Crossfield was apt to drink; that the company that used to mess with them must have known of the general conversation, but that he does not think that they knew any thing about the mention that was made of the dart, because that was in private. He was then asked whether he himself had not told a story of a hare, and he gave us some particulars of that story, and

and that certainly raises a considerable degree of doubt whether this man is perfectly and entirely to be depended upon, in respect to his capacity; the story was certainly a foolish one, though not absolutely impossible to be true; but he added to it, that there was a notion that the place was troubled, which leads to a suspicion that he himself conceived there was something supernatural in the event which he related. This would be a strong mark of a distempered imagination. You will recollect that a witness for the prisoner said, that Winter declared that the hare was a witch or a devil in the shape of a hare. That which dropped from this man himself, in the course of his evidence, concerning the place being troubled, connects very closely with what the witness related; and the whole, taken together, marks so strongly that this man's mind is not perfectly composed, that it must weigh against the credit of his testimony, even though there should be no reason to doubt but that he means to speak the truth. This man has given very material evidence against the prisoner; but it can hardly be thought, having this cloud thrown over it, a sufficient foundation for a verdict in this important cause, between the King and the prisoner at the bar.

Richard Penny, the next witness, describes himself to be Master at Arms of the Daphne; he said that vessel was taken by the French, and he was put on board the Elizabeth; he said he heard Crossfield singing in his bed a song, which occasioned his asking him some questions the next morning, as the song wished damnation to a King; he asked him what King he meant; Crossfield said the King of England; upon his remonstrating with him, Crossfield threatened to have him put in irons, and then he said he was one of the three that attempted to blow a dart at his Majesty, in Covent Garden; that Tom Paine's works were what he would be governed by, and that if ever he arrived in England, he would attempt the like again; he said that when they were coming into Mevagissey, the prisoner said to him, young man, was not you on board the Elizabeth, he answered that he was; the prisoner then desired that he would take no notice of what was said on board the Elizabeth; the witness said he mentioned it at Portsmouth, in consequence of which he  
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was sent to Plymouth, where he made an information; he said they were captured upon the 22d of September, 1794; that Crossfield came on board in the month of March, and remained about a month aboard; that he messed with Dennis, Captain Clarke, and others; that the mess consisted of seven; he said he recollects that on board the Elizabeth, Crossfield was once in close conference with the French officer.

The next witness is Walter Colmer; he is a person who was employed to apprehend this prisoner, and to convey him from on board the cartel at Fowey to Bodmin gaol; he said the prisoner was put into a post-chaise, with another constable to attend him, and he swears that upon the road the prisoner told him that he would give him and his partner each a guinea to let him go, that they would only get a few shillings for carrying him to Bodmin; after that he offered them two guineas each; one asked him what they should do with the driver, the prisoner said if they would let him have one of their pistols he would soon settle that matter; he was asked whether the prisoner was not in liquor, he said that he might be a little in liquor, but he did not think he was much.

[*The Chief Justice being reminded by Mr. Gurney, that Colmer said, that when he asked for the prisoner, he answered to the name of Crossfield, added,*] I should have stated to you that Colmer, in part of his evidence, said that the prisoner, when he was apprehended, answered to the name of Crossfield.

Elizabeth Upton is described to be the wife of one Thomas Upton; she gave an account of having missed her husband from the 22d of February last, when he went out; she said she never saw him afterwards, but that his hat was brought home by a waterman; she said he gave her a seal before he went out, and she believes, having heard nothing of him, that he is not now alive; she said that he was a sober man, she never saw him disguised in liquor; she knew Crossfield, she had seen him at her husband's house frequently; and also Palmer, she has seen him there in company with Crossfield; she said she thought she recollected having seen the two models, which are now produced, lying in her husband's shop, at the house in Bell-yard; she said she



she had known Hill; that something like those models were brought home by Hill one night; but she has no recollection of having ever seen a tube, which was now shewn to her, nor the paper which has been produced; she now lives in Gray's Inn Lane.

George Steers lives in Gatwood's Buildings, Hill-street, Finsbury-square; he said he happened once, though not a member of the Corresponding Society, to be at one of their meetings in the latter end of the year 1794, somewhere about the month of August, there he saw Upton, he observed Upton was lame; he observed that he held something in his hand, at first he thought it was a walking-stick, but it turned out to be no walking-stick; there was a fellow clerk along with him; he asked Upton what it was, he did not give any answer; he asked for what purpose it was intended, Upton shewed it him in his hand, he then perceived by the light that it was made of brass; that the tube, which is now produced, is in appearance the same, but he cannot undertake to say it is the same.

William Henry Pusey said he was with the last witness at this meeting of the Corresponding Society; that Upton was there; he saw under his coat something which resembled that tube which is now produced; he asked Upton what it was, Upton pulled it further out, but gave no answer, only shook his head; that the thing, when produced, did not appear to him to be solid.

Edward Stocker, the other constable, who was not called immediately after the first, said that as they were conveying the prisoner to Bodmin gaol, he offered them a-guinea a-piece, and afterwards two guineas a-piece, to let him go, and said it was better to let him go than to take a little money to carry him to gaol, and that he was man enough for both of them, by which I suppose he meant that the witness might make that excuse, that he had got away from them by superior force; Colmer asked him what they were to do with the driver, he answered, if you will give me one of your pistols I'll pop at him, and settle the matter; that he could give them a draft on some person at Fowey; the witness asked whether he knew any inhabitant of Fowey, he said no, he did not know any inhabitant, but it was a person in  
Fowey,

Fowey, who would answer his draft; he cannot say that the prisoner appeared to him to be in liquor, but that he afterwards did fall asleep, and slept soundly a great part of the way; that they set out about nine o'clock in the evening.

Harvey Walklate Mortimer is then called; he is a gunsmith in Fleet-street, and has been near thirty years in the business; he has been used to the construction of air-guns; he has frequently constructed them in the form of a walking-stick; he says they will not take effect entirely without explosion but in the open air; when the air has a free current you cannot hear it; in a room it makes a noise, like the clapping of a hand; that in a theatre it would make less noise than in a small room; that it has so little recoil, that if you were to hold it before your eye with a glass between you would not perceive that it hurt the glass, and he said a very accurate aim may be taken; he said the tube of an air-gun might be so constructed as to discharge an arrow. A drawing is produced to him of two arrows, one barbed, the other not; he said the barbed arrow might be so constructed, that the barbs might collapse, and so be put into this tube, and when forced out again they would regain their position; the springs must be weak, but they would act upon a joint, and, being made weak, they might be pressed in; he says undoubtedly such an arrow might occasion death; he is shewn those two pieces of wood, he said that they certainly might make a cylinder, in the form of the longest of those pieces; that the small end of the models mark the size of the bore, and that if this was designed for a piston to condense the air, it would be to be put on occasionally upon the air-gun, and he says that they might condense the air sufficiently to charge a brass tube with condensed air, so as to discharge an arrow three or four times without re-charging it; he was asked to look at the paper, and see whether he could take upon himself to say that the models were made from the drawings in that paper, he said he could not take upon himself to say, from the appearance of the paper, that they were made from those drawings, that without something having been said, he should not have known for what that paper was intended, or what it was to represent;

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he said that they make now their air-guns in a neater form than this, in the form of a walking-stick; that the recipient for condensed air may be within the tube, and the condenser either within or without. He was asked as to the possibility of some matter being enclosed in the barb of the arrow, and which, though the arrow was discharged, might not be lost till it struck the object, and then it would part with that matter, he said he believes that an arrow might be so constructed; he went into a more particular description of his air-gun, which I do not think extremely material, and I did not encourage him to go further into it, because I did not wish it should be very particularly taken down to inform the world of that which it is better the world should not know; but he said that which is material to the subject of our enquiry, which is, that upon looking at these models, he does believe that they are models of part of an air-gun; he said that if he had not seen them along with the tube, he should not have been so well satisfied, but that it is very satisfactory to him seeing them along with the tube, that that was the purpose for which they were constructed, but that without the tube it would be his belief that they were intended as parts of an air-gun. That you see is very material, because the very point of the overt act is, that these were models of part of the instrument, which might be used for the purpose expressed in the overt act, namely, to destroy the King.

Mr. Ward was then called; he said that upon the 12th of September, 1794, he saw the paper which has been produced, which has a figure of a barbed arrow upon it, in the possession of Upton, at Upton's own house; and he thinks he saw likewise the other paper, but he did not see the tube. On the Saturday, which was the next day, he went to give information of it; and he saw Mr. Pitt upon the Wednesday following, when the information was given.

Mr. Palmer being again brought up to be asked a question that was omitted, said that Crossfield's circumstances were bad; that his property had been assigned for the benefit of his creditors.



Gentlemen, this is the evidence on the part of the prosecution.

On the part of the prisoner James Parkinson was the first witness called, who described himself to be a surgeon and apothecary in Hoxton-square; he said that in August 1794, he was a member of the Corresponding Society; that Higgins and Smith were members of the General Committee; that enquiries were instituted in the Committee by Higgins and Smith, at the request of the Committee of Correspondence, into the character of Upton, upon a charge of having set his house on fire; that there was a meeting, at which Upton was present: I think this was all that he said upon his original examination.

Upon his cross-examination, he was asked whether he had not been at some time in possession of a paper entitled *La Guillotine*, or *George's Head in a Basket*, he said he had such a paper, but that he did not receive it in the Society; he said he had heard that Le Maitre and Upton were reconciled; he said that he did go to Hill after these people were apprehended, to hear all that he could collect, in order to give the Privy Council all the information he could; that he never heard of any quarrel between Upton and Crossfield, and that Hill expressed uneasiness about having turned these models.

The next witness was John Bone, who lives at No. 8, Weston-street, Southwark, a muslin clearer; he said he was a member of the Corresponding Society in the months of August and September 1794, and a member of the General Committee; that Le Maitre, Smith, and Higgins were members; and that there were disputes between them and Upton some time after the commencement of August; that they originated in Upton's bad character; that Higgins and Le Maitre were taken up upon the 27th or the 28th of September; that Smith and Higgins had attacked Upton's character, and there was a great dispute, with considerable violence, between Le Maitre and Upton, he believes that was on the 4th of September; that it threw the whole assembly into great agitation; that a letter had been sent in, reflecting highly upon the Society; that when it was known that it was written by Upton, and he confessed it, Le Maitre

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was very severe upon him; that he called him a man, considering him as unworthy the name of a citizen; he said that Upton threatened to be revenged of Le Maitre; that Le Maitre said to him if he had any thing to settle, it would be better to do it at another time, and he gave him his address; the same evening Higgins moved, in the General Committee, a vote of censure upon Upton, which was discussed, and Upton going towards the door, Higgins said that if they meant to do any thing upon the vote of censure they must be quick, for that he was hopping off; this put Upton into a great rage, and he called Higgins a wretch, for reflecting upon his natural infirmity; that Higgins made answer, perhaps I ought to tell you you lie, but it shall suffice at present to say I did not mean it so; Smith said if Upton's name was kept in the printed list of the Society his name should not continue there; and that the night before these people were apprehended the list was ordered to be published without Upton's name.

John Huttley, a watch-spring maker, in Great Sutton-street, Clerkenwell, said he saw Upton in September 1794; that their conversation turned upon Higgins, Le Maitre, and Smith having been apprehended. Upton said it was their own fault, they had made free with his character.

William Brown said he knew Upton; that in September 1795, he asked him concerning what Crossfield was detained for, Upton said he could not tell; he asked if he knew what was the chief accusation against him, Upton said he did not know; he asked him if he knew Le Maitre, Higgins, and Smith, Upton said yes, too well, they were three damned villains, and had used him in the most villainous manner; that they still continued to hurt his character, and that they had attacked him in the street, calling him an informer, and brought a mob about him, and that if they did not desist he should certainly use some means; he told Upton that he must make some allowance, considering the ill usage he had given them, by laying against them an accusation apparently unfounded, Upton said he was unacquainted with the former part of the story, and that he would relate the whole; that prior to all this business there had been a

subscription for the families of the State prisoners; that subscriptions were received at his house as well as at others; that Higgins, Le Maitre, and Smith had accused him of being a thief and an incendiary; that the Society had refused to give him a fair trial upon it, and that they still continued abusing him in every public company; the witness told him such accusations as those, in his judgment, could not arise from nothing at all; that Upton then said he would tell him what it alluded to; he had once a house in Cold Bath Fields, which was burnt down; he was advertised, and a reward offered for apprehending him; that he agreed with a friend of his, that his friend should produce him, that they might get the reward, and when they had got the reward the Phoenix Office could make nothing against him, and he appealed to the witness whether, as he was acquitted in the eye of the law, any man ought publicly to accuse him. All this goes but a little way, because there is nothing that points directly one way or the other to the question, whether any charge which was brought against Le Maitre, Higgins, and Smith was or was not well founded; he only gives the reasons why he is at enmity with them, and why he thinks they have used him ill; and, as far as he was concerned in it, a sort of apology for his bringing forward a charge which, whether true or false, perhaps otherwise he might not have done.

John Cleverton said he was a prisoner in Brest, at the time Crossfield was there, on board the same prison ship, from the 19th of February to early in May; he does not recollect any declaration respecting the King, but he has frequently heard Crossfield sing Republican songs; that he never heard him make any declaration as to any plot there was against any body; that there were other Captains of vessels, Captain Clarke, Captain Bligh, Mr. Dennis, a man of the name of Denton, and Mr. Widdiman, who used all to mess together; he said Crossfield was a very jolly fellow; that the sick prisoners were sent to the hospital; he himself went to the hospital on the 19th of May; that he came over in the same cartel with the prisoner; he said he knew that in the month of May the prisoner signed his proper name Crossfield, because he signed it to some instrument of his at his request; they used to call him  
Doctor;



Doctor; there was no particular intimacy he said between Crossfield and Dennis, or Le Bretton: the witness said that they afterwards landed at Fowey; that to the best of his judgment Crossfield appeared glad that he was got over; he said he himself, at the time he was taken, was going to the Canaries, as agent to a house in St. John-street, to collect wines for the Government: he described Crossfield as a man who drank hard; he said he does not remember hearing Crossfield say any thing of having settled any affairs in France to his satisfaction; he does not know neither that he put the name of Wilson into the list, but has heard that he did; there were no quarrels about republican principles; then he is asked whether a song that is shewn him was one of the songs Crossfield sung? he said he never heard him sing that song but once or twice, the chorus in particular, he said, he had a recollection of; that song was read. Gentlemen, I shall not repeat it to you, it is not at all essential to the cause, and it were better that such songs should have no circulation; a more flagrant seditious song, aiming more directly at the whole Constitution of the Government of this Country, consisting of King, Lords, and Commons, could not have been composed: it was truly said by Mr. Attorney General, that it was an epitome of every thing that could be imagined to be sedition; though the name of our King is not in terms mentioned, yet Mr. Cleverton, if he had recollected himself, could hardly have thought himself justified in saying that this man had never said any thing reflecting upon the King.

Anthony Collins, the next witness, said he was a Captain of one of the prison ships, he explained that by saying that they were cartel ships that were in the river, and the French converted the cartel ships into prisons; he said that he heard there was a medical man on board one of the other ships, and therefore he invited him on board his ship, and that turned out to be the prisoner Crossfield; that he considered himself as much indebted to him for his care and attention in his profession, and he thinks he saved the lives of fifty or sixty people by it; he messed in the cabin with him; there were the two Byrons and some others; he had not known him before; he says, for want of better em-

ployment, they drank too much; he solemnly avows he never heard any thing of plots against the Government: that the witness, Winter, was sometimes at that mess, and told ridiculous stories, one was the catching the devil in the shape of a hare; he took the hare for a devil, and was very much displeased when they attempted to contradict him; and he said he was the common laughing stock on board; he believed he was somewhat flighty, whether from the loss of his property (for he understood he had lost a good deal of property) or whether the effect of his imprisonment he could not tell; he walked about in the night talking to himself, and slept very little; he never had any conversation with Winter about Crossfield; the witness lived mostly with Crossfield; he said Crossfield mentioned the derangement of his circumstances, but did not mention the occasion of his leaving England, or whether that was the occasion; he sung songs, but none of them against the Government; he does not recollect any such song as that the chorus of which is, "Plant, plant the tree;" he did hear that Crossfield put his name down in the list, when they were to be exchanged, H. Wilson, it did not surprize him at all, having communicated to him the embarrassment of his circumstances he ascribed it to that; he said his conduct was uniformly that of an orderly and good subject; that he reprobated the war, and called it an unjust war; he said he has often heard him say that the Commandant had offered to let him stay, and to give him an establishment to superintend the hospitals, but he declined it, rather wishing to be at home, and seemed to rejoice in returning home; he said he never saw Mr. Cleverton above once or twice, for he was part of the time on board one of the other ships, and part of the time at the hospital, sick.

Elizabeth Smith is then called, who is a widow, living at No. 17, Great Hermitage-street, Wapping, where she has lived for the last eight years, having lived in Red Lion-street for the seven preceeding years; she said she has known Crossfield five years, that he was very often to and fro, that he was a man of levity, but by no means of a harsh and severe temper; she knew Captain Clarke of the Pomona, she has known him two years;

years; she had also seen the witness, Le Bretton, that he was before the mast, with Captain Clarke; that he used to come to Captain Clarke; she remembered his coming after his return; he told her she might expect Captain Clarke soon, for he had been examined at Guildhall, or somewhere. Le Bretton said to Captain Clarke, that he had heard Crossfield describing a gun to him, that he, Clarke, was present, which Clarke denied. Le Bretton said, several times, he hoped he should hang him. Crossfield, she says, lodged with her at three different times, under the name of Crossfield; that the last time he lodged with her was about a month before he went out; she says on Christmas day Clarke dined at her house, and Crossfield dined with him; that was the day before Clarke went on board his ship; that Crossfield did not join the ship for five weeks after, at Portsmouth; that he went by the name of Crossfield while at her house, and she apprehends he went to the Change, and other different places, with the company in the house, particularly Captain White: one day Crossfield came in when Captain Clarke was speaking to some gentleman to recommend him a surgeon, and Crossfield said perhaps he might go with him: she said Crossfield was a good-natured man, who would hurt nobody: she denies that she ever asked Le Bretton to be favourable to Crossfield, and that she never said truth was not to be spoken at all times; she said she never spoke either to Le Bretton or Dennis in that manner, that she had not seen them since Le Bretton was about the house.

They then call five witnesses to the prisoner's character.

Mrs. Watson is the first witness, she said Crossfield lodged at her house in Dyer's-buildings, that he lodged there by his own name; that he came on the 26th of July 1794, and staid two months; that he kept nothing locked up, that he was a very careless kind of man, but behaved extremely well; she never saw him afterwards, and no enquiry was ever made about him.

Mrs. Beasley said, she had known him four years, he had the character of a humane good-natured man.

Mr. Wyld, a surgeon, in the Kent road, said, he had known



him three years, and gave him a very good character for his good nature and humanity.

Mr. Wilson, a surveyor, in Dorset-street, said he had known him from a child, that he was an exceeding good man, and he never thought he could commit any crime.

Mr. Hepburn, a surgeon, in Great Hermitage-street, said, he has known him four years, he had attended the family where Crossfield lodged, he thought him a light, easy, good-natured man.

They then, on the part of the prosecution, called up Thomas Dennis and John Le Bretton, in order to confront Mrs. Smith.

Thomas Dennis said, that Mrs. Smith made enquiries of him what he knew about this charge against Crossfield? and she said, she hoped that he would not declare any thing to hurt him. He said, there were warm disputes at dinner, that there were three or four Captains of ships present: she said she would say any thing to save him; and that Captain Smith, who was present, said, Mrs. Smith you ought to be ashamed of yourself to say such a thing. He said Captain Clarke, Captain Smith, and a young gentleman that had apartments there, whom he believes to be a wharfinger, were present at this time.

John Le Bretton said, that he very well knew Mrs. Smith; that she asked him what he had said, and she said she hoped he would not say any thing to hurt the prisoner; that he told her he should speak the truth, and did not know whether it would hurt him or no; to which she answered, that the truth was not always to be spoken; so that you see here arises a question, whether Mrs. Smith has materially impeached the credit of Le Bretton, or whether Le Bretton and Dennis together have materially impeached the credit of Mrs. Smith, that is a subject which is entirely for the consideration of the Jury: when you are ascertaining what is the true state of the facts in evidence, you must make up your minds as to that, whether you will consider Mrs. Smith as having materially impeached the credit of Le Bretton, or whether you think upon the result of the evidence Le Bretton and Dennis together have impeached her credit; if it be true that she tampered with these witnesses, and said she  
would

would say any thing for this man to save him, instead of impeaching the credit of the witness, she is herself discredited : all that I shall say upon it is, that this man Dennis, who I do not find is impeached at all by her evidence, does aver that it was so, and does boldly appeal to persons who were present at the time, who at least hereafter, if not now, might contradict him if he did not speak the truth.

Gentlemen, I have now gone through the evidence ; I told you I should first recapitulate the evidence, and then endeavour to inform you in what manner this evidence applies to establish the whole or any part of the overt acts contained in this indictment, and there appear to me to be two overt acts, or rather two different sets of overt-acts, varying only as to the description of the instrument, one being coupled with the poisoned arrow, the other not ; in other respects it is in truth but one set of overt acts, they are both of the same nature, they both charge a conspiracy to prepare an instrument to destroy the King, and they both of them charge the employment of Hill to make models for a part of that instrument, and either of them, if they were made out satisfactorily, would certainly be sufficient to support this indictment,

First then, you are to consider whether there is any evidence before you of this conspiracy to procure the instrument described to be made, being described two different ways.

You are next to consider if you are satisfied that there was a conspiracy in which this prisoner was involved to prepare such an instrument ? Whether the purpose for which it was to be prepared is sufficiently ascertained by the evidence.

Thus far is clear, that three people, of whom one was by the positive evidence of Palmer fixed to be the prisoner Crossfield, did go, upon the day mentioned by the witnesses, I think one of them said the fourth of September, to three different brass-founders, and did there apply to have a brass tube made, of a particular description, which they gave when they went to the first man ; and though they desired to have a cylinder very correct, and very exact, yet they did not think fit to disclose the occasion for which they wanted this cylinder, in which there is certainly

tainly an air of mystery. It appears that when they were at another brass-founder's, they said that it was wanted for something belonging to an electrifying machine belonging to Upton; if it had really been wanted for that purpose, one can hardly see a good reason why there should be any secrecy when they were at the first brass-founder's.

It appears too, that three persons, one of whom is sworn to be Crossfield (the same man, Upton, is, I think, spoken to by all of them) went afterwards to Hill's, to get a model made for part of something; perhaps when you compare that part of the evidence with the evidence arising from the application to one of the brass-founder's, it may be explained how they came to apply for this wooden model; you recollect one of the brass-founder's said, he could not undertake to make it unless they would produce him a model, or a pattern; they asked him whether a rocket case would not do? he said it might do if it was closed at the ends; whether that would or not have done I do not know, but they did not agree there, and the question is whether that did not suggest the hint for getting something done in wood from whence the brass-work might be cast, which was afterwards to be made use of? three persons went upon this errand; there is a question in the evidence whether Crossfield ought to be taken to be consenting to what was done at that time, supposing he was there; and the witness, Palmer, has certainly introduced circumstances to render it doubtful, though all these three persons were present, whether more than one of them took any part, for he would have you to understand that it was an accidental meeting of the three; that Crossfield and he were dining together, that they went to Upton's only for the sake of his getting his watch, and that it was merely by accident, they being going into the city, that they walked with Upton; and perhaps the situation of the different places they went to may in some measure correspond with that, for they seem to have begun in New-street, then to have gone to Shoe-lane, and then to Cock-lane, which seems to be all in one direction.

On the other hand, though Palmer has said this, there certainly are circumstances fit for your consideration, to fix if not upon Palmer,



Palmer, at least upon the other two, the having a good deal to do with the transactions at these brass-founders, and particularly at Hill's; one of the brass-founders told you that one of the men, who could not be Palmer, for he disavows it, and who was not the lame man, asked in what time the thing would be finished, which could be nothing to him, unless he had something to do with the general purpose for which they went there; and as to the transaction at Hill's, both Hill and Palmer say that this man, who turns out now according to the evidence of Palmer to be Crossfield, did take some part in making the sketch by which Hill was to work; now that seems very inconsistent with the notion that it was purely an accidental meeting, and that they were there only as companions to Upton, who was doing his own business, without any participation whatever with them in that business; to be sure it is not absolutely impossible that when an awkward sketch was making, a man who was not immediately concerned in it might take a pen and make a stroke; however, it is a circumstance that is to be weighed in the case upon the whole of the evidence, as tending to shew that these three persons were at all these places for the purpose of procuring, first of all, this brass cylinder to be made; and in the next place procuring the model to be made, from whence a brass cylinder was to be made by some other person.

Supposing you see reason to believe that this prisoner was consenting to that which was doing at these houses, principally by Upton, that he was there consenting to it, and taking part in it; the consequence would be that then there would be evidence for your consideration to prove that there was an agreement by the prisoner among others, for the procuring an instrument to be made, which constitutes a part of one of the overt acts; and that there was by the prisoner, as well as by others, an actual employment of Hill to make a part of this instrument; another, and the most material part of the overt act is the purpose for which it was to be made; the whole of the overt act must be proved, and the evidence will or will not amount to such proof, as it shall or shall not turn out to your satisfaction, that the purpose for which this instrument was to be made was to assassinate the King; as to which

which this part of the evidence has no application; you are referred therefore to declarations which have been made by this prisoner when he was out of this Country, when a prisoner on board a prison-ship, as evidence sufficient to satisfy you for what purpose he had agreed with the others to get this instrument prepared, and to get Hill to execute the model.

The evidence that you have heard, is from four different witnesses; John Le Bretton, Thomas Dennis, James Winter, and Richard Penny. It has been observed with great truth that the accounts are not uniform, that sometimes he spoke of having attempted to assassinate the King, at other times of having invented an instrument for the purpose of assassinating the King, at other times of having actually shot at the King, and of an intention to shoot at him; these declarations unquestionably are not uniform, they are also open to the objection that they are very extravagant in their nature, probably some of them false; that it would be excessively absurd in a man in the situation of the prisoner to use such expressions, if he were guilty; almost as absurd as to use them, if he was not guilty; and it would be very difficult to imagine that he should do that. They assist that observation by what is very fairly argued for the prisoner; that a man of a light wild cast, subject to be intoxicated, a talking rattling man, if he did say any thing of this sort, would hardly be supposed to be serious in what he said, or mean to expose himself to a charge of so heavy a nature, as that which these declarations will import. You will be disposed to give a great deal of weight to the observation which arises upon the nature of those declarations; on the other hand, undoubtedly there is a most remarkable coincidence in every one of these declarations, with respect to the nature of the instrument which he talks of, and the manner in which it was to be used; for the accounts given by all the four witnesses speak of a dart to be blown through a tube, and the use of it to be as expressed in these declarations, for the purpose of assassinating the King.

A man may have a bad habit of talking very wildly and extravagantly, but to account for these declarations without imputing guilt, there must be an impression upon the mind of the prisoner

prisoner almost to insanity; otherwise, how is it to be believed that he, an innocent man, should always recur to this, that this should always make a part of, or be referred to in these declarations, that there was an air-gun he had invented, which was to operate by the means of throwing a dart by the effect of condensed or inflammable air.

Gentlemen, those declarations have been as it seems to me improperly called confessions, they are not properly confessions which import a particular charge first made, and an acknowledgment of that charge; they are declarations made by the prisoner at different times, upon different occasions; which declarations referring to former existing facts, are the explanation and connection of those facts, which serve to make those facts intelligible; whatever question may have arisen at any time respecting the admission of confessions in High Treason, I take it that there never was a question made whether when facts had been stated, the explanation of those facts might not be taken from the mouth of the prisoner. According to the rules of evidence what a prisoner has said respecting a particular fact is admissible evidence, not in the nature of a confession, but as evidence of the particular fact; and that it is therefore agreeable to the general law of evidence to receive such declarations in all cases whatever, in order to explain and to establish the true state of any matter of fact which is in dispute, or the subject of enquiry before a Jury; as far, therefore, as regards the admitting these declarations of this prisoner as evidence for your consideration; I have no doubt in stating it to you as my opinion in point of law; if my Brother and Mr. Recorder see any reason to hesitate upon it, they will give you their opinion; but I see no reason to doubt, but that all these declarations are good evidence in law, in order to explain the facts that had been before stated, and to give them their proper sense and their proper bearing; and the only question will be as to the effect of them, and whether they do or do not sufficiently satisfy you, (it being first established to your satisfaction that this prisoner was one of those who was concerned in going to these people, and using the means to get an instrument prepared, both by enquiry for a cylinder, and also by bespeaking



bespeaking a model) I say, whether they do or do not sufficiently satisfy you for what purpose that cylinder was procured, and for what purpose those parts of that instrument were ordered to be made; whether for the purpose, that when the instrument was completed, it should be used for the dangerous and traitorous purpose imputed by the present indictment.

Gentlemen, this is to be inferred principally from the substance of the evidence of the prisoner's declarations; but on the part of the prosecution they have also endeavoured to strengthen that inference, by shewing you in evidence, what the conduct of the prisoner has been; and they say, and they say truly, if they make out that the conduct of the prisoner has been, that he has either originally withdrawn himself from justice, or that he has taken pains to secrete himself from justice, after he was apprehended; that those are circumstances which do at least infer a consciousness of very great guilt, and if there be no other reason assigned for the conduct of the party, very much corroborating and supporting the charge of the particular guilt that is imputed to him.

You have heard a great number of observations upon the particular parts of the evidence, as to the prisoner's conduct, respecting his originally withdrawing himself from this Country; it will be a point for you to satisfy yourselves about, whether he did withdraw from this Country under the apprehensions of being involved in this charge, or whether he withdrew from this Country merely on account of the pressure of his circumstances; they conclude on the part of the prosecution, that he withdrew from this Country on account of this charge, and they do it upon the ground principally of Palmer's evidence. Palmer having represented that he and Crossfield went away to Bristol soon after Le Maitre and Higgins were taken up, and that though they returned again, he never returned to his old lodgings, but went to Wapping; and that he kept the place where he lodged a secret, even from Palmer, which is a circumstance that is a little difficult to account for, considering the intimacy he admits to subsist between them, considering that Palmer communicated to Crossfield that the Privy Council had made enquiry after him, and that he had undertaken to produce him before the Privy Council, and he

knew that Crossfield did not chuse to go before the Privy Council; they infer that the true reason for his not going to his former lodging was because he wished to secrete himself; that the true reason for his going afterwards on board the ship was because he wished to get out of the reach of the Privy Council; the circumstance of Palmer not knowing where he lodged, can hardly be accounted for in any other way, than by Palmer's not wishing to know it; to be sure if he had known it, it would be more difficult to avoid those enquiries that might be made after Crossfield, he having undertaken to produce him.

On the other hand, opposed to this, is the account given on the part of the prisoner by his witnesses, that in truth he originally withdrew from London only in order to settle at Bristol if it should appear eligible; that he came back to London and lived publicly at Wapping, using no means to conceal himself, till an opportunity offered by accident of going on board Captain Clarke's ship, and that he went on board because he could not stay in this Country, having been obliged to assign the whole of his property for the benefit of his creditors. The fact, with respect to that, depends partly upon the credit due to Palmer's evidence, and more especially to Mrs. Smith's evidence, because she took upon herself to say, that Captain Clarke mentioned his wanting a surgeon in the presence of Crossfield, and that Crossfield said perhaps he might go with him—the credit of Mrs. Smith will depend upon whether you think she is a fair witness speaking the truth, or whether you think she comes under that bias imputed by Dennis in particular, and the other witness, that she comes resolved to say whatever she could for the benefit of this man; that is a point entirely for you to settle; if this man withdrew from the danger that he thought himself in of being apprehended under this charge, that is a strong corroboration of all the rest of the evidence. On the other hand, if he withdrew from the mere pressure of his circumstances, he will avoid all the inferences that have been made from his conduct in that particular. Then as to the rest of his conduct, he appears by the evidence of one of his own witnesses, when he was on board the prison-ships, to have been a man of dangerous principles by the language he held,

held, by the republican songs which he sung; and, above all, by that republican song which is laid before you. Gentlemen, it would not be fair, in point of argument (and in times like these we feel the full force of the objection), to draw a particular conclusion in proof of a particular offence, from a man's being tainted with such unhappy principles; therefore, upon this evidence I lay very little stress. Upon the whole of the evidence of the prisoner's general conduct while he was abroad, it does not appear to me to afford any answer to this charge. When it is urged to be a strong corroboration of it, perhaps it hardly goes quite to that length, being, in the result of it rather evidence of character, than of matter of fact referable to this charge. When the prisoner returned to England, and when he was apprehended in consequence of Winter's information, his conduct seems to be more difficult to be reconciled with his innocence, and there is no contrariety in the evidence with respect to that, for it is established against him that he would have bribed an officer to have let him go; and he talked in a way which leads one to suppose that he would not have hesitated to have done something worse, in order to have got out of the custody he was then in.

This cannot be accounted for by supposing he was under any apprehension of being sent to gaol by his creditors, for there was no reason to suppose this was a charge made against him by creditors; on the other hand, the circumstances plainly denoted he was under a charge of a very different nature. Constables, not a common officer, came for him by the name of Crossfield; he certainly answered to the name of Crossfield; it would have been vain indeed to deny his name at that time. Under those circumstances, he made that offer, which certainly is imputable to him as evidence of a consciousness of very great guilt; whether it applies directly to the support of this charge against him which is now under your consideration is for your judgment.

Gentlemen, considering the declarations of the prisoner as evidence sufficient in its nature to prove the use and application of the instruments that were proposed to be made, I am of opinion that, upon the whole case before you, there is evidence  
proper



proper to be submitted to your consideration to prove the two overt acts to which I have applied the evidence on this indictment. Though I state to you that there is evidence for your consideration, it would not be for me, after having heard his defence and commented upon it, to state, that the evidence is sufficient to satisfy your consciences—that is your business; I only say, that in law the evidence will be sufficient to be left to your consideration to prove the overt acts, unless he gives a sufficient answer. Now, then the question will be, what answer the prisoner has made: he has answered partly by very able observations from his Counsel, partly by evidence. The learned Counsel who opened his case told you, that he brought with him into this cause no other duties than those of the advocate—I think he did not do himself justice when he said that, for I think, from his manner of treating the subject, he brought with him the duties of a good subject and of a good citizen; one whom nothing could tempt to endeavour to sap the foundations of the law and the Constitution of the Country under which we live: he admitted distinctly that the only question was, whether the parties were guilty of the fact—whether any of the overt acts were sufficiently proved. To the first and most general observation made for the prisoner, that as the crime is enormous, and dreadfully enormous indeed it is, so the proof ought to be clear, I most cordially subscribe.

As to the particular observations that were made upon particular detached parts of the evidence, I shall leave them to your consideration with only one observation upon them, which is, that observations upon detached parts of evidence can seldom go for much, because the fact that results is not from any one particular piece of evidence, but it is from the whole evidence taken together—from the chain of circumstances which a great number of facts given in evidence do ultimately form; from thence most frequently the fact results which is the material proof in the cause, it is very rarely the result of any one particular piece of evidence, and therefore I cannot admit that it can properly be said that any thing which passed at the first brass-founder's, and at the second, and so on, conveyed no proof; it certainly did

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convey proof which was material, but only material because it was a link in the chain which was afterwards to be formed, upon which the general result was to be taken. You have certainly been addressed with a great many very proper and weighty considerations upon the nature of the declarations; of the confessions as they were called, of the prisoner; you have heard them, and will give them all the weight they deserve. I am inclined to go as far as I possibly can, with respect to all possible allowances that can be made for such declarations as are here given in evidence, allowing for the possible mistake of the party who made these declarations in point of language and expression, and allowing for mistake in point of apprehension of the party who hears the declaration; with all these allowances still the question will be, whether, in respect of the coincidence which I have observed upon, you can explain the whole of these declarations, and avoid making the conclusion from them, that this man did distinctly acknowledge that he was one of the three that had contrived an instrument which was to be employed for the purpose of assassinating the King. If you are of opinion that these declarations, upon the strength of the observation made by the Counsel, have not sufficient weight in your minds, and do not satisfy your consciences, of course, without going further, there would be an end of this case; because, undoubtedly, the case rests both upon the credit and upon the effect of those declarations made by the prisoner: if the observations made by the Counsel should not have sufficiently explained away these declarations, you will then consider how far the facts laid before you in evidence on the part of the prisoner will assist these observations, or will defeat the effect of this evidence.

They begin by calling to you witnesses to prove that the whole of this charge originated in malice, conceived by one Upton, who is not here, against Higgins, Le Maitre, and Smith, in consequence of a quarrel that they had in a club, which they called the London Corresponding Society; and they have certainly given evidence that there was a quarrel, which proceeded to a considerable length; it is enough, without going into the particulars of it, to state that there was such a quarrel;

but the difficulty in this part of the case is, supposing that this was clearly established, and let it have what weight it will when those persons with whom this man is proved to have quarrelled shall come before a Jury to be tried, what application can it have to the present case? because, if you are to suppose this whole charge originated in that quarrel, what is to become of all those circumstances which have an immediate application to the prisoner Crossfield, with whom Upton has not quarrelled. Recollect the observation which was made by the Attorney General, and which does bear directly against this prisoner, because with him there was no quarrel, that it would be the strangest thing in the world if all these circumstances, which are in evidence against Crossfield, should have happened by accident, Crossfield having no manner of implication in the business; and that he should have made any of these declarations which are in evidence, when in truth there was no bottom at all to any part of the case—when this whole business originated in a quarrel between other people: if the case were otherwise, and there was really a foundation for the charge, but the charge had first been brought against Higgins, Le Maitre, and Smith, in consequence of a quarrel, that would make the whole case intelligible. The Attorney General's observations certainly deserve weight; for it might be, that though Upton brought forward this charge in order to vent his malice against these people, yet that it was a charge founded in fact, in which this prisoner was implicated: how to reconcile it to that which is now suggested, that it is all invention, is to me, I confess, totally impossible; if you can do it, he will have the advantage of it.

For the purpose of explaining the conduct of Crossfield at Brest, and in his passage home, they have called two witnesses, of the name of Cleverton and Collins. I feel it difficult to state to you any direct result from that evidence; in truth, the two witnesses do not agree in their representation of this man's conduct:—Cleverton admits him to have gone strange lengths, though he never happened to hear any of those things which the other people have charged him with having said; Collins, on the other hand, represents him as an orderly decent man, discover-



ing no enmity, no aversion to the Government, simply blaming the war, and he certainly speaks of him handsomely in other parts of his conduct, at the same time that he was in his private character light, apt to drink and to rattle, but upon the whole he describes him as an innocent subject, and as a man in some respects of great merit: these two witnesses, therefore, differing a good deal in their testimony, it is difficult to draw any particular result from their evidence applicable to this case; the utmost that can be made of it is, that sometimes, in some companies, he did sing republican songs, in others he did not—that in some places he was reserved and careful of his conduct, in others not so. There this must rest, except as to the effect of what I consider as a very good character given of him by Mr. Collins.

I have already observed to you upon the evidence of Mrs. Smith, and upon the evidence of Mr. Palmer, whose evidence has been used for the prisoner, to constitute a defence upon that part of the case which respects the probability of this man's having fled for it, when the accusation against Le Maitre, Higgins, and Smith was made. I do not think I can add any thing, therefore you will judge of it; I mention it now only as being a part of the defence, you will consider what effect it ought to have.

They then proceeded to establish the character of this prisoner, which is certainly a proper head of evidence, sometimes extremely useful, sometimes of weight enough almost to weigh down any thing that can be said against a man. With regard to this person's character, they do not carry it a great way; they represent him as a light man, a man of levity of manners, very careless, apt to drink, and distressed in his circumstances, but good-natured, humane, and as they think not likely to do an ill thing. And I think it right to add here Collins's account, which I think goes as much in favour of his character as any part of the evidence; because a man who will in such a situation as he and every English prisoner were in, when requested, come on board a sick-ship, and devote his time and attention to the care of a crew who were not able to pay him, and will take upon him a severe duty, and be thereby the means of saving a  
great

great many lives, has in that respect a great deal of merit; and, indeed, such a character as they describe him to be of, in other respects, is a character which leads one to be surprized that a man of that description should enter into such a conspiracy as this is, for undoubtedly it is the conspiracy of dark and malignant minds, and very unlike that of a man of the character which they prove him to bear. I can only say with respect to this, that in some cases good habits, manners, and principles are tainted and corrupted by circumstances; and I am afraid that nothing has done more towards corrupting them than the effusion of modern political principles, which have unsettled men's minds, and have prepared them to conceive that new duties belong to them, and to entertain but loose notions of the means by which the speculative good that they propose to effect may be brought about; whether any such circumstances have entered into this business or no I do not know; this man was in a situation, certainly, to be deeply tinctured with republican notions; and they could not be carried into the excess into which they are carried in that song—that execrable composition, which was laid before you—without a dereliction of all principle, without a man's having by degrees prepared himself to become, from a humane, tender, good-hearted man, capable of doing friendly offices, and bearing his part in the society in which he lives—to become a downright monster—not a citizen, not a man, but, I repeat, a downright monster.

Gentlemen, I shall have discharged my duty when I have told you, that the evidence, which is before you, is evidence proper for your consideration, as proof of these overt acts. I should think you would be disposed, principally to confine your attention to the overt act, as to the instrument last described in the indictment; my reason for thinking so is this, because, if I recollect right, there is but one witness that speaks of this instrument to be put in operation for the purpose of throwing a poisoned dart, and that witness is Winter. Now, independent of all objection which might arise from there being but one witness to this fact, there certainly are some exceptions to Winter's testimony; and if it stands alone, with regard to the circum-

stance of the poisoned dart, it would be a difficult thing, perhaps, for you to satisfy yourselves to rely upon his evidence as to that part of the case; but the instrument more generally described remains the substance of another overt act, proved by other witnesses as well as by Winter, upon which, therefore, it seems to me that it would be the safer course for you to proceed. The observation was fair with regard to Winter, that though he might be a very flighty man, yet that he must have received some impression from what passed between him and Crossfield, importing some charge against Crossfield, of a very criminal nature, from the circumstance that he immediately, on his coming on shore, went and gave information before a Justice, and that circumstance is corroborative, at least, of the evidence of the other witnesses, though it may not be sufficient to entitle him, on account of the natural infirmity belonging to him, to full and entire credit, for the whole evidence he has given, and, I think, it would not be right to press his evidence much further. I conclude, therefore, what I have to offer to your consideration by stating to you, that in consideration of law, the train of evidence, which has been laid before you, is sufficient to be submitted to your judgment as proof, by two sufficient witnesses, of these two overt acts the conspiring to prepare an instrument, not particularly described for the purpose of destroying the King; and the having employed Hill to make a model for a part of such instrument.

With regard to the weight of the evidence as sufficient, or not sufficient to satisfy your judgment as to the truth of it, and as to the entire effect of it, that is exclusively your province, and I have never an inclination to interfere with the province of a Jury, upon any subject, and least of all upon a subject of this nature, in which the interests of the public are so deeply involved, and in which the life of an individual is concerned, it is a sacred trust reposed in you. And now, Gentlemen, after having heard all that can be said upon this subject, it is your province to make true deliverance between our Sovereign Lord the King, and this prisoner at the bar.



*The Jury withdrew at six o'clock to consider of their verdict, they returned into Court, twenty minutes before eight, with a verdict of*

NOT GUILTY.

*The prisoner was immediately discharged.*

---

THURSDAY, MAY 19th, 1796.

*Paul Thomas Le Maitre, John Smith, and George Higgins, were set to the bar.*

*The first twelve Gentlemen in the pannel, who appeared, were sworn the Jury; when the Clerk of Arraignment charged the Jury with the prisoners in the usual form.*

MR. ATTORNEY GENERAL.

Gentlemen of the Jury,

In the discharge of my official duty I felt myself bound, under the then circumstances of the case, to lay before a Grand Jury of the Country, an indictment against the prisoners at the bar for High Treason. The law has ordained that no man shall be indicted, or tried for that offence, unless there are two witnesses to an overt act, or one witness to one overt act, and one witness to another overt act, of the same species of Treason.

I had occasion to lay before a Jury a case against a person, who was indicted, together with those now at the bar. Upon that trial I stated what I believed to be a fact, which had been very nicely examined into, that a person of the name of Upton was dead. In consequence of a conviction that he was so, I stated to that Jury, that it was not in my power to produce him.

In the course of that trial some suggestion was made, that that person was living, in consequence of which I have thought it my duty to enquire further into the subject. It is impossible for me to say, that contrivance may not elude the most diligent, and the best conducted enquiry; but I am satisfied, as well as I can be of any such fact, that that man is not in existence: being so satisfied, the law informs me, that the prisoners ought not to be put on their trial, and that they ought not to be put in jeopardy, unless there be that quantity of evidence, which is required by law in this sort of case—It is, therefore, my duty not to give you the trouble of hearing insufficient evidence, and the prisoners at the bar are therefore entitled to that acquittal, which, in consideration of law will make them innocent.

At the same time I am bound to say, that if it shall hereafter appear that those, who have come forward in the most solemn manner to induce the belief of that man's death, have practised an imposition, and have deprived the Country of the benefit of that man's testimony; and the person, who has been tried, and those, who now stand upon their deliverance, of an opportunity of meeting it, I shall hold myself bound, if I continue in the office, which I at present unworthily fill, to bring those persons to condign punishment.

*The Jury found the prisoners NOT GUILTY—and they were immediately discharged.*



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